

**STATE OF FLORIDA  
SITING BOARD**

<b>IN RE: TAMPA ELECTRIC COMPANY and )</b>	
<b>PROGRESS ENERGY FLORIDA'S LAKE )</b>	<b>OGC CASE NO. 07-2216</b>
<b>AGNES-GIFFORD TRANSMISSION LINE )</b>	<b>DOAH CASE NO. 07-5691TL</b>
<b>SITING APPLICATION NO. TA07-16 )</b>	
<b>_____ )</b>	

**FINAL ORDER APPROVING CERTIFICATION OF TRANSMISSION LINE**

On October 22, 2008, an administrative law judge ("ALJ") with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order in this certification proceeding. A copy of the Recommended Order is attached as Exhibit A. The Recommended Order states that copies of the Recommended Order were served on counsel for all represented parties and on the unrepresented parties to the proceeding. The matter is now before the Governor and Cabinet, sitting as the Siting Board, for final action under the Florida Electric Transmission Line Siting Act, sections 403.52-403.5365, Florida Statutes ("TLSA").

**BACKGROUND**

On August 1, 2007, Tampa Electric Company ("TECO") and Florida Power Corporation d/b/a Progress Energy Florida, Inc. ("Progress Energy") submitted a Petition to Determine Need for the Lake Agnes-Gifford 230 kV transmission line project with the Florida Public Service Commission ("PSC"). On September 26, 2007, the PSC issued Order No. PSC-07-0784-FOF-EI in which it determined the need for the transmission line. The PSC determined that the new 230 kV transmission line is needed by June 2011 to preserve electric system reliability and integrity along the Interstate 4 corridor in Central Florida. The PSC found that the transmission line is the

most cost-effective and efficient means to both increase the capability of the existing 230 kV network and serve the increasing load and customer base in the Central Florida region.

On December 12, 2007, TECO and Progress Energy filed their Application for Corridor Certification (“Application”) with the Department of Environmental Protection (“Department”) and paid the appropriate application fee. The Application was filed under the TLSA for a new 230 kV overhead transmission line and related facilities connecting the existing Lake Agnes substation in Polk County to the planned Gifford substation in southwestern Orange County (“the Project”). The Project will run through parts of Polk, Osceola, and Orange Counties and extends approximately 27.5 miles. The Project is a joint venture between TECO and Progress Energy (“Applicants”). Approximately 10.5 miles of the Project are in TECO’s service territory and approximately 17 miles are in Progress Energy’s service territory.

The Applicants sought certification of their Preferred Corridor between the existing Lake Agnes substation and the planned Gifford substation, within which the Applicants will ultimately construct the transmission line on a narrow right-of-way (“ROW”). The Applicants’ Preferred Corridor exits the existing Lake Agnes substation in northeastern Polk County and extends east-northeast approximately 18.9 miles within, adjacent to, or in proximity to the Orlando Utilities Commission (“OUC”) McIntosh-Taft transmission line ROW, which generally runs parallel to Interstate 4 (“I-4”), across Polk and Osceola Counties. It then turns north and crosses Loughman Road (Polk County Road 54, now known as Ronald Reagan Boulevard), Old Lake Wilson Road, and I-4, and continues north along the Daniel Webster Western Beltway, also known as State

Road 429 (“SR 429”), co-locating in the SR 429 ROW, for approximately 8.6 miles. The Preferred Corridor then turns west and exits the SR 429 ROW, just north of Western Way and enters into Progress Energy’s existing easement, crossing Hartzog Road into the planned Gifford substation in southwestern Orange County.

### **DOAH PROCEEDINGS**

The Application was forwarded to the DOAH on December 17, 2007, with a request that an ALJ conduct a formal hearing. By Notice of Hearing dated December 27, 2007, the certification hearing was scheduled to begin on May 5, 2008. The Department determined that the Application was complete on January 18, 2008.

On April 4, 2008, Oak Island Community Cove Owners Association (“OIC”), an association representing ninety-one homeowners in western Osceola County, filed its Petition to Intervene, together with a notice formally proposing an alternate corridor (“the OIC Alternate Corridor”) in the area of the intersection of Funie Steed Road/Oak Island Road and SR 429/Western Beltway in Osceola County. Intervention was authorized by Order of the ALJ dated April 15, 2008. On the same date, a Petition to Intervene was filed by Blackwater Associates, Ltd., which was granted by Order dated April 21, 2008. On May 9, 2008, Mountain Funding, LLC, filed a Petition for Leave to Intervene, which was granted by Order dated May 9, 2008.

On April 9, 2008, the Applicants and Department filed notices of acceptance of the OIC Alternate Corridor for consideration in this proceeding. On May 1, 2008, OIC filed with the Department additional information in support of its proposal. On May 27, 2008, the Department filed a determination that the OIC Alternate Corridor filing was complete. At the request of the parties, the final hearing was rescheduled to August 18

through 22 and September 19, 22, and 23, 2008, in Kissimmee, Florida. Only two days, however, were required to complete the hearing. All notices required by law were timely published in accordance with Section 403.527, Florida Statutes. The final hearing was conducted for the purpose of receiving oral, written, and documentary evidence concerning whether the Project should be approved in whole, or with such modifications and conditions as the Siting Board deems appropriate, or denied under the TLSA.

During the certification hearing the parties presented testimony from several fact and expert witnesses and presented several joint and party-sponsored exhibits. Orange County and OUC participated in the hearing but did not submit any evidence. Intervenor Blackwater Associates, Ltd, and Mountain Funding, LLC, did not attend or otherwise participate in the hearing. A public hearing was held at 6:00 p.m. on August 20, 2008, at which members of the public presented evidence and testimony.

The Hearing Transcript was filed with DOAH on September 11, 2008. Applicants and the Department (jointly) and OIC filed Proposed Recommended Orders. The ALJ issued his Recommended Order on October 22, 2008.

### **SUMMARY OF THE RECOMMENDED ORDER**

In the Recommended Order the ALJ described each of the two proposed corridors: the Applicants' Preferred Corridor and the OIC Alternate Corridor, including a detailed description of the proposed corridors and the land uses and significant natural features for each segment of these corridors. He described the transmission line design and construction methods. He outlined the Applicants' extensive public outreach program, which was then integrated into their corridor selection process. He summarized the agency reviews of the Applicants' Preferred Corridor, noting that none

of the agencies involved in the review process recommended denial or modification of the Applicants' Preferred Corridor. (RO ¶ 51). The ALJ also noted that three reviewing agencies submitted supplemental reports on the OIC Alternate Corridor, and the Department issued a Supplemental Written Analysis on the Project, including the OIC Alternate Corridor. The Department did not recommend approval of the OIC Alternate Corridor, although it found the alternate corridor to be proper for certification. (RO ¶ 52).

The ALJ then compared the impacts of each proposed corridor with respect to each of the five certification criteria specified in section 403.529(4), Florida Statutes. With respect to the criterion that the project ensure electric power system reliability and integrity, the ALJ found that transmission line could be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor. However, he also concluded that the Applicants' Preferred Corridor better provides electric power system reliability and integrity. (RO ¶¶ 54, 115-116). The Applicants' Preferred Corridor will be 1,472 feet shorter than the OIC Alternate Corridor, and involve fewer maintenance and access issues. (RO ¶¶ 54-56).

With respect to the criterion that the project meet the electrical energy needs of the state in an orderly and timely fashion, the ALJ found that the Applicants' Preferred Corridor better meets the State's electrical energy needs in an orderly, economical, and timely fashion than does the OIC Alternate Corridor because the OIC Alternate Corridor adds significant cost to the overall project and long-term costs associated with operation and maintenance. (RO ¶¶ 118-119). The OIC Alternate Corridor is estimated to cost \$4.4 million more for construction than the Applicants' Preferred Corridor. The cost differential is caused by the need for more easement area, more access roads, the

nature of the soils, the foundation requirements, the heavy angle requirements, and more wetlands mitigation of the OIC Alternate Corridor. For example, because the OIC Alternate Corridor is primarily located in wetlands, the OIC Alternate Corridor will require larger poles and larger pole foundations, which involve higher costs. (RO ¶ 57). With respect to the criterion that the project comply with the applicable nonprocedural requirements of the relevant agencies, the ALJ concluded that construction, operation, and maintenance of the transmission line within either the Applicants' Preferred Corridor or the OIC Alternate Corridor in conformance with the recommended Conditions of Certification will comply with applicable nonprocedural requirements of agencies. (RO ¶¶ 59, 120).

With respect to the criterion that the project is consistent with applicable local government comprehensive plans, the ALJ found that the transmission line can be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor to be consistent with applicable provisions of local government comprehensive plans. (RO ¶ 121). The Polk County Comprehensive Plan identifies electric transmission and distribution facilities as a permitted use in all land use categories. The Osceola County Comprehensive Plan and the City of Auburndale Comprehensive Plan identify utility and public facilities as allowable uses in all land use categories provided that the TLSA standards and other regulatory standards are met. The Orange County Comprehensive Plan identifies utility and public facilities as allowable uses in all land use categories. (RO ¶¶ 68-69). The ALJ noted that the Reedy Creek Improvement District Comprehensive Plan identifies that utility corridors are allowable uses where no other alternatives are feasible. The PSC found that the

Applicants considered four alternatives to the Project and none were feasible. Further, the Applicants considered a number of alternatives in the corridor selection process and considered the OIC Alternate Corridor and selected the Applicants' Preferred Corridor as the best choice among the various corridors. (RO ¶ 70).

Finally, with respect to the criterion that the project effect a reasonable balance between the need for the transmission line and its impacts on the public and the environment, the ALJ concluded that both the Applicants' Preferred Corridor and the OIC Alternate Corridor are appropriate locations for a transmission line from a land use perspective, but the Applicants' Preferred Corridor is a better location in relation to impacts upon both the public and the environment. (RO ¶¶ 75, 89, 123). With respect to impacts on the public, the ALJ noted that the Applicants' Preferred Corridor is co-located with existing linear facilities for nearly its entire length. Co-location is advantageous because the existing linear facilities often provide existing access, minimizing the need for new access roads, the need for new clearing, and the need for further encumbrance of additional land. In contrast, the OIC Alternate Corridor follows an area of undeveloped land and thus does not offer the advantages of co-location. (RO ¶¶ 76-77, 124). The ALJ found that it is an advantage for the OIC Alternate Corridor over the Applicants' Preferred Corridor that the OIC Alternate Corridor has fewer homes within the corridor than does the Applicants' Preferred Corridor. However, it is a disadvantage for the OIC Alternate Corridor that it bisects two components of the Emerald Island residential development. (RO ¶ 79). In addition, the ALJ found that the impacts of the Applicants' Preferred Corridor on OIC homes are minimal. (RO ¶¶ 80-82). The ALJ also found that an advantage from a land use perspective for the

Applicants' Preferred Corridor is that it is a shorter linear facility than the OIC Alternate Corridor. (RO ¶83).

With respect to the impacts on the environment, the ALJ noted that the Applicants' Preferred Corridor has the advantage of avoiding conservation lands while the OIC Alternate Corridor in contrast crosses lands held for conservation purposes. (RO ¶ 84). Both the Applicants' Preferred Corridor and the OIC Alternate Corridor are appropriate locations for a transmission line from an environmental perspective, but the Applicants' Preferred Corridor is a better location in relation to impacts upon the environment. (RO ¶¶ 89-92). The ALJ found that the transmission line will have more adverse environmental impacts if constructed, operated, and maintained in the OIC Alternate Corridor than the Applicants' Preferred Corridor because of the prevalence of undisturbed wetland habitat within the OIC Alternate Corridor as compared to the previously-disturbed habitat along SR 429 within the Applicants' Preferred Corridor. Construction of the transmission line within the OIC Alternate Corridor would result in greater forested and herbaceous wetland impacts and require greater alteration to previously-undisturbed areas. (RO ¶ 92). Construction of the transmission line within the OIC Alternate Corridor would have more impact within the 100-year floodplain than the Applicants' Preferred Corridor. (RO ¶ 98). Thus, the ALJ concluded that the evidence demonstrated that the Applicants' Preferred Corridor effects a better balance between the need for the transmission line and the impacts of the line on the public and the environment from than does the OIC Alternate Corridor. (RO ¶¶ 123-124).

The ALJ found that the transmission line can and will be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor

in compliance with the Conditions of Certification, which are found in the Department's Exhibit 3. (RO ¶ 103). The Conditions of Certification establish a post-certification review process through which the final right-of-way, access road, and structure locations will be reviewed by agencies with regulatory authority over the project. The Applicants agreed to the Conditions of Certification to minimize land use and environmental impacts of the construction, operation, and maintenance of the transmission line. The ALJ noted that the parties agree that the Conditions of Certification are consistent with applicable nonprocedural requirements of the state, regional, and local agencies with regulatory jurisdiction over the transmission line, and that such conditions should be imposed on the certification, if granted, for either of the corridors under consideration in this proceeding. (RO ¶¶ 103-105).

Thus, the ALJ concluded that based on a preponderance of the evidence presented at the certification hearing, the Applicants met their burden of proving that their Preferred Corridor should be certified as proposed, subject to the Conditions of Certification, set forth in Department Exhibit 3. (RO ¶ 125). The ALJ recommended that the Siting Board enter a Final Order approving the Project subject to the Conditions of Certification. (RO page 58).

#### **STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS**

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, “unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence.” The term “competent substantial evidence” does not relate to the quality, character,

convincing power, probative value or weight of the evidence. Rather, “competent substantial evidence” refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. See, e.g., *Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. See, e.g., *Rogers v. Dep’t of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dept. of Env’tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.*, 652 So. 2d 894 (Fla. 2d. DCA 1995). These evidentiary-related matters are within the province of the ALJ, as the “fact-finder” in these administrative proceedings. See, e.g., *Tedder v. Fla. Parole Comm’n*, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz v. Dep’t of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Also, the ALJ’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. See, e.g., *Collier Med. Ctr. v. State, Dep’t of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). An agency has no authority to make independent or supplemental findings of fact. See, e.g., *North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ’s conclusions of law and interpretations of administrative rules “over which it has

substantive jurisdiction.” An agency’s review of legal conclusions in a recommended order, are restricted to those that concern matters within the agency’s field of expertise. See, e.g., *G.E.L. Corp. v. Dep’t of Env’tl. Prot.*, 875 So. 2d 1257, 1264 (Fla. 5th DCA 2004). An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. See, e.g., *Pub. Employees Relations Comm’n v. Dade County Police Benevolent Ass’n.*, 467 So. 2d 987, 989 (Fla. 1985); *Fla. Pub. Employee Council, 79 v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless “clearly erroneous.” See, e.g., *Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993); *Dep’t of Env’tl. Reg. v. Goldring*, 477 So. 2d 532, 534 (Fla. 1985).

Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. See, e.g., *Suddath Van Lines, Inc. v. Dep’t of Env’tl. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

However, agencies do not have jurisdiction to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with “factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations,” are not matters over which the agency has “substantive jurisdiction.” See *Martuccio v. Dep’t of Prof’l Reg.*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep’t of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So. 2d 1025, 1028 (Fla. 1st DCA 1997). Evidentiary rulings are matters within the ALJ’s sound “prerogative . . . as the finder of fact” and may not be

reversed on agency review. See *Martuccio*, 622 So. 2d at 609. Agencies do not have the authority to modify or reject conclusions of law that apply general legal concepts typically resolved by judicial or quasi-judicial officers. See, e.g., *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140,1142 (Fla. 2d DCA 2001).

Finally, in reviewing a recommended order and any written exceptions, the agency's final order "shall include an explicit ruling on each exception." See §120.57(1)(k), Fla. Stat. (2008). However, the agency need not rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." *Id.*

### **RULINGS ON EXCEPTIONS**

In this proceeding, Intervenor OIC timely filed Exceptions to the Recommended Order, and Intervenor OUC filed two technical Exceptions. On January 6, 2009, the Applicants filed a Motion for Leave to Late File Applicants' Responses to Intervenor's Exceptions, and on January 7, 2009, Intervenor OIC filed a Motion to Strike the Applicants' motion for leave. The Department as Agency Clerk for the Siting Board entered a separate order granting the Applicants Motion for Leave to Late file responses to OIC's Exceptions. The Siting Board's rulings on each of the Exceptions follows. Rulings on each set of Exceptions are numbered by the proponents of the exceptions.

### **Intervenor OIC's Exceptions**

#### **Exception No. 1**

OIC takes exception to the ALJ's description on page 8 of the Recommended Order ("RO") in Finding of Fact 1 of the South Florida Water Management District's

("SFWMD") appearance during the public comment portion of the hearing. OIC argues that this "appearance" conflicts with section 403.527, Florida Statutes, such that all references to SFWMD in the RO should be stricken. However, the record evidence establishes that SFWMD attended the public hearing at which witnesses testified under oath, were subject to cross examination, challenge and rebuttal. (T. p. 378-385). Such evidence is part of the record of the certification hearing and can be considered by the ALJ. See § 403.527(5), Fla. Stat. (2008). Therefore, any factual findings based on the testimony from SFWMD witnesses are supported by the competent substantial record evidence. See § 403.527(3)(b), Fla. Stat. (2008).

In addition, the ALJ concluded that SFWMD was a party with standing in this proceeding. (RO ¶ 108). OIC does not contest the record evidence which demonstrates that the OIC Alternate Corridor crosses conservation lands held by SFWMD. (RO ¶ 84). Although Section 403.527(2)(b), Florida Statutes, provides that the water management district could be deemed to have waived the right to be a party by not filing a timely notice of intent to be a party; the provision goes on to state "unless [SFWMD] participation would not prejudice the rights of any party to the proceeding." OIC does not argue that SFWMD's participation has prejudiced its rights in any manner.<sup>1</sup> Therefore, based on the foregoing, OIC's Exception No. 1 is denied.

#### Exception No. 2

OIC takes exception to Finding of Fact 43 where the ALJ found that ". . . the impact on the homes in the OIC community will be substantially diminished." OIC does

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<sup>1</sup> Also, section 403.527(2)(d), Florida Statutes, provides that "[a]ny agency whose properties or works may be affected shall be made a party upon the request of the agency or any party to this proceeding."

not contend that the substance of the finding is not based on competent substantial evidence. The finding describes the Applicants' agreement to adjust the eastern boundary of the proposed corridor from 100 feet to 55 feet east of the edge of SR 429 ROW. (T. 287-290). The ALJ's ultimate finding that this adjustment substantially diminishes the impact on the homes in the OIC community is a reasonable inference from the record evidence. The Siting Board has no authority to reweigh the evidence and draw a different inference than that reached by the ALJ. These evidentiary-related matters are within the province of the ALJ, as the "fact-finder" in these administrative proceedings. See, e.g., *Tedder v. Fla. Parole Comm'n*, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Therefore, OIC's Exception No. 2 is denied.

#### Exception No. 3

OIC takes exception to Finding of Fact 74 where the ALJ found that ". . . there are many locations throughout Florida where transmission lines similar to the proposed transmission line coexist with these land use patterns." OIC argues that this finding is not supported by competent, substantial evidence. However, the competent substantial evidence of record in the form of expert testimony supports the ALJ's factual findings. (T. p. 252-253). Therefore, OIC's Exception No. 3 is denied.

#### Exception No. 4

OIC takes exception to Finding of Fact 75 where the ALJ found that "the Applicants' Preferred Corridor is a better location in relation to impacts upon the public." OIC contends that no competent substantial evidence was presented to support this finding. However, the record discloses competent substantial evidence in the form of

expert testimony that supports the ALJ's finding. (T. 250-251, 254-256, 259-261, 262-263). OIC further argues that the finding "directly conflicts" with Finding of Fact 81. However, OIC draws an inference that there will be "significant impacts on the public" from the ALJ's statement that the Applicants might need an aerial and access easement for the transmission line; and then argues that this is in "direct conflict" with Finding of Fact 75. However, as the Applicants point out in their response the ALJ found that there are only three or four properties where Applicants might need an aerial and access easement. (RO ¶ 81).

The Siting Board has no authority to reweigh the evidence and draw a different inference than that reached by the ALJ. It is the role of the ALJ to weigh the evidence presented at a DOAH final hearing, resolve conflicts therein, and judge the credibility of witnesses. *See, e.g., Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dept. of Env'tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.*, 652 So. 2d 894 (Fla. 2d. DCA 1995). Therefore, OIC's Exception No. 4 is denied.

#### Exception No. 5

OIC takes exception to Finding of Fact 79 where the ALJ determines that "it is a disadvantage for the OIC Alternate Corridor that it bisects two components of the Emerald Island residential development." OIC argues that no competent substantial evidence was presented to support this finding, and Finding of Fact 124, line 7. However, the ALJ's findings are supported by competent substantial record evidence. (Applicants' Ex. 27; T. 250-251). Therefore, OIC's Exception No. 5 is denied. *See*

*Florida Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 5th DCA 1991).

Exception No. 6

OIC takes exception to Finding of Fact 80 where the ALJ found that the residents of the OIC development are predominantly short-term renters or vacationers. OIC does not contend that the finding is not supported by competent substantial evidence. In fact, OIC's own witness' testimony supports this finding. (T. 348-349). Therefore, OIC's Exception No. 6 is denied. See *Florida Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 5th DCA 1991).

Exception No. 7

OIC takes exception to Finding of Fact 80 where the ALJ finds that if the Applicants' Preferred Corridor is certified ". . . there will be no existing homes within the eventual transmission line ROW." OIC contends that this is a "factual error." However, the competent substantial record evidence supports the ALJ's finding that fully states that "the Applicants have committed that, if the Applicants' Preferred Corridor is certified, there will be no existing homes within the eventual transmission line ROW." The Applicants' expert testimony was that there will be no existing homes within the eventual transmission line ROW, if the Applicants' Preferred Corridor is certified. (T. 287-289, 292-294, 254-255). Therefore, OIC's Exception No. 7 is denied.

Exception No. 8

OIC takes exception to Finding of Fact 81 where the ALJ found that certain evidence which he describes in the finding demonstrates that there will be "very little impact[s]" on the OIC residential development. OIC argues that the finding is not

supported by “competent significant evidence” and allegedly conflicts with an earlier statement in the same finding of fact. Finding of Fact 81 is supported by competent substantial evidence in the record. Applicants’ expert testified that Applicants’ preferred location for the transmission line in the vicinity of the OIC development is to be on the west side of SR 429, which would not impact any OIC homes. (T. 124). If that location is not feasible, the Applicants’ preferred location in this vicinity would be the east side of SR 429, with poles located 15 feet inside Department of Transportation ROW. Then the only property rights that the Applicants would need outside the ROW would be no more than 30 feet for overhanging aerial easement and access rights. (T. 113, 117). This would only affect three or four properties within OIC; and the pole would no nearer to those homes than approximately thirty feet. (T. 293-294).

Therefore, OIC’s Exception No. 8 is denied.

#### Exception No. 9

OIC takes exception to Finding of Fact 82 on the basis that the ALJ “did not correctly capture the OIC concern regarding landscaping within OIC and on Tollway ROW.” OIC argues that certain testimony was not considered and the finding “must include” it. However, the Siting Board is not authorized to reweigh the evidence, or make supplemental findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994). Therefore, OIC’s Exception No. 9 is denied.

#### Exception No. 10

OIC takes exception to Finding of Fact 83 on the basis that it “withholds factual information germane to the Corridors proposed for consideration,” and must be supplemented with additional information. However, the Siting Board is not authorized

to reweigh the evidence and make supplemental findings of fact. See, e.g., *North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994). Also, the finding is supported by competent substantial record evidence. (T. 241, 256; Applicants' Ex. 28, Table 1). Therefore, OIC's Exception No. 10 is denied.

#### Exception No. 11

OIC takes exception to Finding of Fact 84 on the basis that SFWMD testimony during the public hearing is inadmissible. The Siting Board does not have jurisdiction to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." See *Martuccio v. Dep't of Prof'l Reg.*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So. 2d 1025, 1028 (Fla. 1st DCA 1997). OIC also makes the same argument as in its Exception No. 1.

Therefore, based on the foregoing and the ruling in Exception No. 1 above, OIC's Exception No. 11 is denied.

#### Exception No. 12

OIC takes exception to Finding of Fact 97 where the ALJ determines that the impacts to protected species will be greater in the OIC Alternate Corridor than the Applicants' Preferred Corridor. OIC disagrees with the ALJ's judgment regarding the use of "greater" and argues that the evidence does not substantiate the conclusion. The Siting Board is not authorized to reweigh the evidence, judge the credibility of witnesses, or resolve conflicting evidence. See, e.g., *Collier Med. Ctr. v. State, Dep't of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando*

*Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). Also, the finding is supported by competent substantial record evidence. (T. 202-205; Applicants' Ex. 12, Row H).

Therefore, OIC's Exception No. 12 is denied.

#### Exception No. 13

OIC takes exception to Conclusion of Law 115 on the same basis as Exception No. 10. Based on the ruling in Exception No. 10 above, OIC's Exception No. 13 is denied.

#### Exception No. 14

OIC's exception "does not clearly identify the disputed portion of the recommended order by page number or paragraph, . . . does not identify the legal basis for the exception, . . . does not include appropriate and specific citations to the record." §120.57(1)(k), Fla. Stat. (2008). Therefore, the Siting Board need not rule on this exception. *Id.*

#### Exception No. 15

OIC's exception "does not clearly identify the disputed portion of the recommended order by page number or paragraph, . . . does not identify the legal basis for the exception, . . . does not include appropriate and specific citations to the record." §120.57(1)(k), Fla. Stat. (2008). Therefore, the Siting Board need not rule on this exception. *Id.*

### **Intervenor OUC's Exceptions**

#### Exception Nos. 1 and 2

OUC takes exception to the list of Appearances in the RO (page 2) which identifies those parties who made appearances at the hearing. OUC asserts that while

the RO correctly lists OUC as having appeared, it does not indicate that OUC appeared as an intervenor. OUC also takes exception to the unnumbered fourth paragraph of the Preliminary Statement in the RO (page 4). OUC asserts that this paragraph notes the petitions to intervene, and subsequent orders granting intervention, but inadvertently omits OUC's Petition for Leave to Intervene and the subsequent order granting intervention. The competent substantial record evidence demonstrates that OUC filed its Petition for Leave to Intervene on January 16, 2008, which was granted on January 22, 2008. Therefore, OUC's exceptions are granted.

### **CONCLUSION**

The ALJ concluded that based on a preponderance of the evidence presented at the certification hearing, the Applicants met their burden of proving that the Applicants' Preferred Corridor should be certified as proposed, subject to the Conditions of Certification, set forth in Department Exhibit 3. (RO ¶ 125). Thus the ALJ recommended that the Siting Board enter a Final Order approving the Project subject to the Conditions of Certification. (RO page 58).

Having reviewed the matters of record and being otherwise duly advised, the Siting Board adopts the ALJ's recommendation.

It is therefore ORDERED that:

A. The Recommended Order (Exhibit A) is adopted in its entirety, except as modified by the rulings in this Final Order, and is incorporated by reference herein.

B. The corridor for the Lake Agnes-Gifford 230 kV Transmission Line Project consisting of the Applicants' Preferred Corridor, is APPROVED for certification, subject

to the Conditions of Certification in DEP Exhibit 3, as amended, attached and incorporated by reference herein (Exhibit B).

C. Authority to assure and enforce compliance by TECO and Progress Energy and their agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to DEP.

Any party to this proceeding has the right to seek judicial review of this final order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 5<sup>th</sup> day of FEBRUARY, 2009, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on January 27, 2009.

THE GOVERNOR AND CABINET  
SITTING AS THE SITING BOARD

  
THE HONORABLE CHARLIE CRIST  
GOVERNOR

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

  
CLERK

2/5/09  
DATE

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

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Claudia Llado, Clerk and  
Donald R. Alexander, ALJ  
Division of Administrative Hearings  
The DeSoto Building  
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Tallahassee, FL 32399-3060

and by hand delivery to:

Toni L. Sturtevant, Esquire  
Department of Environmental Protection  
3900 Commonwealth Blvd.  
Mail Station 35  
Tallahassee, FL 32399-3000

this 6th day of FEBRUARY, 2009.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



FRANCINE M. FFOLKES  
Administrative Law Counsel  
3900 Commonwealth Blvd., M.S. 35  
Tallahassee, FL 32399-3000

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: TAMPA ELECTRIC )  
COMPANY and PROGRESS ENERGY )  
FLORIDA'S LAKE AGNES-GIFFORD ) Case No. 07-5691TL  
TRANSMISSION LINE SITING )  
APPLICATION NO. TA07-16 )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 19 and 20, 2008, in Kissimmee, Florida, before the Division of Administrative Hearings, by its assigned Administrative Law Judge, Donald R. Alexander.

APPEARANCES

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For Intervenor:

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STATEMENT OF THE ISSUES

The issue for determination is whether either of the proposed transmission line corridors for the proposed Lake Agnes-Gifford 230 kV transmission line comply with the criteria in Section 403.529(4), Florida Statutes, and if so, which of those corridors has the least adverse impacts with respect to the criteria in Section 403.529(4), Florida Statutes, including cost. If one of the corridors proper for certification is determined to have the least adverse impacts, the issue is whether certification of that corridor should be approved in whole, with modifications or conditions, or denied. See § 403.529(4) and (5), Fla. Stat. If the two corridors are found to be substantially equal in adverse impacts regarding the criteria in Section 403.529(4), Florida Statutes, including costs, the Siting Board shall certify the Joint Applicants' Preferred Corridor. See § 403.529(5)(c), Fla. Stat.

PRELIMINARY STATEMENT

Pursuant to Section 403.537, Florida Statutes, on August 1, 2007, Tampa Electric Company (TECO) and Florida Power Corporation d/b/a Progress Energy Florida, Inc. (PEF) submitted a Petition to Determine Need for the Lake Agnes-Gifford 230 kV transmission line project with the Florida Public Service Commission (PSC). On September 26, 2007, the PSC issued Order No. PSC-07-0784-FOF-EI determining the need for the transmission line.

On December 12, 2007, TECO and PEF filed their Application for Corridor Certification (Application) with the Department of Environmental Protection (Department) and paid the appropriate application fee. The Application was filed under the Transmission Line Siting Act (TLSA), codified in Sections 403.52 through 403.5365, Florida Statutes, for a new 230 kV overhead transmission line and related facilities connecting the existing Lake Agnes substation in Polk County to the planned Gifford substation in southwestern Orange County (the Project). The Project will run through parts of Polk, Osceola, and Orange Counties and extend around twenty-seven miles. The Department determined that the application was complete on January 18, 2008.

The Application was forwarded to the Division of Administrative Hearings on December 17, 2007, with a request

that an administrative law judge conduct a formal hearing. By Notice of Hearing dated December 27, 2007, the certification hearing was scheduled to begin on May 5, 2008. On January 2, 2008, the case was transferred from Administrative Law Judge T. Kent Wetherell, III, to the undersigned.

On April 4, 2008, Oak Island Community Cove Owners Association (OIC), an association representing ninety-one homeowners in western Osceola County, filed its Petition to Intervene, together with a notice formally proposing an alternate corridor (the OIC Alternate Corridor) in the area of the intersection of Funie Steed Road/Oak Island Road and State Road 429/Western Beltway in Osceola County. Intervention was authorized by Order dated April 15, 2008. On the same date, a Petition to Intervene was filed by Blackwater Associates, Ltd., which was granted by Order dated April 21, 2008. On May 9, 2008, Mountain Funding, LLC, filed a Petition for Leave to Intervene, which was granted by Order dated May 9, 2008.

On April 9, 2008, the Applicants and Department filed notices of acceptance of the OIC Alternative Corridor for consideration in this proceeding. On May 1, 2008, OIC filed with the Department additional information in support of its proposal. On May 27, 2008, the Department filed a determination that the OIC Alternate Corridor filing was complete. At the request of the parties, the final hearing was rescheduled to

August 18 through 22 and September 19, 22, and 23, 2008, in Kissimmee, Florida. Only two days, however, were required to complete the hearing. All notices required by law were timely published in accordance with Section 403.527, Florida Statutes. The final hearing was conducted for the purpose of receiving oral, written, and documentary evidence concerning whether the Project should be approved in whole, or with such modifications and conditions as the Siting Board deems appropriate, or denied under the TLSA.

At the certification hearing, the Applicants presented the testimony of David M. Lukcic, TECO's Manager of Capital Projects and Environmental Health and Safety; Chip S. Whitworth, Manager of TECO's Transmission Engineering Department and accepted as an expert; Leamon J. Davis, PEF's Senior Engineer in the Engineering Department and accepted as an expert; Randy Grass, Transmission Line Business Unit Director for Power Engineers, Inc., and accepted as an expert; Karl A. Bullock, Senior Ecologist for Golder Associates, Inc., and accepted as an expert; and Richard A. Zwolak, Director of Environmental Planning and Power Market Sector Leader for Golder Associates, Inc., and accepted as an expert. Also, they offered Applicants' Exhibits 1 through 28, which were received in evidence. The Department presented the testimony of Ann S. Seiler, Siting Coordination Case Manager. Also, it offered Department Exhibits

1 through 7, which were received in evidence. Intervenor OIC was represented by Gary von Behren, its president, who testified on its behalf, and presented the testimony of Greg Nieboer, a Department Environmental Specialist II, and Thomas Howard, a project manager with Pegasus Company, which is under contract to perform services on the Project. Also, it offered OIC Exhibits 1 through 4 and 5A through 5F, which were received in evidence. Orange County and Orlando Utilities Commission participated in the hearing but did not submit any evidence. Intervenors Blackwater Associates, Ltd, and Mountain Funding, LLC, did not attend or otherwise participate in the hearing.

A public hearing was held at 6:00 p.m. on August 20, 2008, for the purpose of allowing members of the public an opportunity to present evidence and testimony. Six members of the public testified: Karen Gilson, Sharon Cullingford, George Clark, John Bedford, Michael LaRaussa, and Paul Torola. Also, Mr. von Behren offered comments during that segment of the hearing. Finally, a representative of the South Florida Water Management District (SFWMD), Edward Yaun, Division Director of its Orlando Service Center, presented testimony.

The Transcript (four volumes) of the final hearing was filed on September 11, 2008. Applicants and the Department (jointly) and OIC filed Proposed Recommended Orders on October 1, 2008, which have been considered in the preparation

of this Recommended Order. On October 3, 2008, OIC filed a paper styled "Demand for Revision to Applicants/DEP Draft of PRO" (Demand). A Motion to Strike Untimely Filing of Oak Island Cove Community Owners Association was filed by the Applicants on October 10, 2008. Finally, an Objection to Applicants' Motion to Strike Untimely Filing was filed by OIC the same date. Because the Demand essentially constitutes a reply to the Applicants and Department's Proposed Recommended Order and is not contemplated by the Uniform Rules of Procedure nor authorized by the undersigned, the Motion to Strike is granted.

FINDINGS OF FACT

Based upon all of the evidence the following findings of fact are determined:

I. Parties

1. The TLSA establishes TECO, Progress Energy, and the Department as parties to this proceeding, and the following became parties upon their timely filing of a notice of intent to be a party, which each has done: Florida Department of Transportation (DOT), Department of Community Affairs, and the Southwest Florida Water Management District (SWFWMD). See § 403.527(2), Fla. Stat. The following agencies did not participate in the proceeding and did not file a notice of intent before the thirtieth day prior to the certification hearing and each one is deemed to have waived its right to be a

party: the PSC; the Florida Fish and Wildlife Conservation Commission; the Department of Agriculture and Consumer Services, Division of Forestry; Osceola County; Polk County; Reedy Creek Improvement District; Department of Health; Department of State, Bureau of Historic Preservation; East Central Florida Regional Planning Council; and Central Florida Regional Planning Council. See § 403.527(3), Fla. Stat. Orange County, Orlando Utilities Commission (OUC), and the SFWMD (during the public comment portion of the hearing only) appeared at the hearing.

2. Pursuant to Section 403.527(2)(c)3., Florida Statutes, any person whose substantial interests are affected and being determined by the proceeding shall be parties to the proceeding upon the filing of a notice of intent to be a party. By stipulation of the parties, having filed a notice of intent to be a party or a petition to intervene, OIC, OUC, Blackwater Associates, Ltd., and Mountain Funding, LLC, are parties to the proceeding without the need to introduce evidence as to substantial interests affected and being determined by the proceeding.

## II. The Corridors Proper for Certification

3. The Applicants' Preferred Corridor exits the existing Lake Agnes substation in northeastern Polk County and extends east-northeast approximately 18.9 miles within, adjacent to, or in proximity to the OUC McIntosh-Taft transmission line right-

of-way (ROW), which generally runs parallel to Interstate 4 (I-4), across Polk and Osceola Counties. It then turns north and crosses Loughman Road (Polk County Road 54, now known as Ronald Reagan Boulevard), Old Lake Wilson Road, and I-4, and continues north along the Daniel Webster Western Beltway, also known as State Road 429 (SR 429), co-locating in the SR 429 ROW, for approximately 8.6 miles. The Preferred Corridor then turns west and exits the SR 429 ROW, just north of Western Way and enters into PEF's existing easement, crossing Hartzog Road into the planned Gifford substation in southwestern Orange County.

4. The OIC Alternate Corridor is designed to avoid the western edge of the OIC development in Osceola County and commences at the Applicants' Preferred Corridor 2,000 feet south of Funie Steed Road/Oak Island Road on the west side of SR 429, where it turns northwest and proceeds approximately 2,000 feet, and then turns northeast and proceeds approximately 2,000 feet, in an approximate horseshoe shape, to rejoin the Applicants' Preferred Corridor along SR 429.

5. A series of aerial photographs showing both proposed corridors is found at Applicants' Exhibit 21; a map showing both proposed corridors is also found at Department Exhibit 3, page 2.

### III. The Application

#### A. Project Description

6. An electrical transmission line is designed to transport large amounts of electrical power from a generating facility or substation to one or more substations. At the substation, the electricity voltage can be either increased or reduced for further transport or for distribution directly to end users.

7. The Applicants are seeking certification of their Preferred Corridor between the existing Lake Agnes substation and the planned Gifford substation, within which the Applicants will ultimately construct the transmission line on a narrow ROW. Once all property interests in the ROW are acquired, the boundaries of the certified corridor will shrink to the typical width of the 25 to 100-foot wide ROW. In some cases, the ROW will be co-located with an existing transmission ROW that is 145 feet wide.

8. The Project is a joint venture between the Applicants. Of the approximately 27.5 miles of the proposed Lake Agnes-Gifford Line, approximately 10.5 miles are in TECO's service territory and approximately 17 miles are in PEF's service territory.

9. The objectives for the Project are to provide a 230 kV electrical path that connects the existing Lake Agnes substation

to the planned Gifford substation, providing a reliable path for the transmission line and reducing the impacts to the community and the environment while maintaining the integrity of Florida's transmission grid.

B. Need for the Line

10. The PSC determined that a new 230 kV transmission line between the existing Lake Agnes substation and the planned Gifford substation is needed, taking into account the need for electric system reliability and integrity and the need to provide abundant, low cost electrical energy to assure the economic well-being of the citizens of the State.

11. The objectives of the Project are to serve the increasing electrical load in the region, to maintain reliability of electrical service within the region, and to minimize future overhead exposure outages within the regional transmission system.

12. The PSC found that the existing Lake Agnes substation and the planned Gifford substation constitute the starting and ending points for the proposed line. The PSC noted that the additional transmission capacity is needed to be in service by June 2011. The PSC also recognized that the Siting Board will make the final determination concerning the route selection upon consideration of the factors and criteria specified in Section 403.529, Florida Statutes.

### C. Transmission Line Design

13. The typical design for the transmission line will be a single-shaft tubular steel or spun concrete structure, with the capability of accommodating an additional 230 kV circuit. The poles are proposed to range in height from 85 feet above grade to 175 feet above grade, with the conductors framed in a vertical configuration. Three conductor phases will be used, and each of the three conductors is anticipated to be a bundled 954 Aluminum Conductor Steel Support/Trapezoidal Wire. The conductor is 1.08 inches in diameter with a weight of approximately 1.23 pounds per foot. There will also be a smaller overhead ground wire to provide lightning protection for the transmission circuit. The maximum electrical current rating is 3,000 amperes.

14. The open span length between structures will typically vary between 500 and 1,000 feet, depending on site-specific conditions. Both pole height and span length may vary to accommodate various site-specific conditions that may be encountered, to take advantage of the terrain, to potentially address community concerns, and to avoid environmentally sensitive areas.

15. Existing roadways, access roads, and structure pads will be used for construction and maintenance access to the transmission line wherever practicable. Access roads and

structure pads will be constructed only where necessary to provide access for construction, maintenance, and emergency restoration. Where constructed, the typical road top width will be 16 feet, with a 2-to-1 side slope, and a typical elevation of 2 feet above the seasonal high water line. Structure pads will have variable sizes but are typically 75 feet by 150 feet. The structure pads are designed to provide a dry, stable surface for staging material and for equipment setup. Culverts may be installed beneath access roads and structure pads with the specific design reviewed by the appropriate regulatory agencies. The design will be similar to previously approved designs.

16. The proposed design of the transmission line complies with good engineering practices. It will be designed in compliance with all applicable design codes and standards, including the North American Electrical Reliability Corporation's standards, the National Electrical Safety Code, the noise ordinances of Polk, Orange, and Osceola Counties, the Department's regulations on electric and magnetic fields, the Florida Department of Transportation's Utility Accommodation Manual, the standards of the American Society of Civil Engineers, the Institute of Electrical and Electronics Engineers, the American Society of Testing and Materials, the American Concrete Institute, and the American National Standards Institute, the requirements of applicable regulatory agencies,

as well as the Applicants' own numerous transmission design standards. There are no applicable designs or standards with which the transmission line will not comply.

D. Transmission Line Construction

17. The initial phase of construction is to survey and clear the ROW. Because much of the length of the corridor is co-located, that is, grouped or placed side by side, with existing roads and utility facilities, the need for clearing has been minimized. Where existing ROW widths are insufficient for placement of the transmission Line or where the transmission line will go cross-country, additional clearing will be necessary. Upland areas will be cleared to ground level. In forested wetlands, the Applicants have committed to use only restrictive clearing methods. Restrictive clearing will be used in wetlands to clear vegetation from the transmission line centerline to 50 feet on each side of the outer conductors and in work areas approximately 64 feet by 150 feet around structure sites. In wetland areas, low-growing herbaceous vegetation can remain within the ROW; stumps in the area beyond 20 feet on either side of the outer conductors will be left in place to preserve the root mat. During clearing, best management practices will be utilized to control erosion.

18. After the ROW is cleared, any necessary access roads and structure pads will be constructed. The Applicants have

committed to use existing access roads and public roads for access to the transmission line to the extent practicable. Where existing access is not available, the Applicants have committed to construct access roads and structure pads in a manner which reduces or eliminates adverse impacts to on-site and adjacent wetlands to the extent practicable.

19. The next phases of construction involve the physical transmission line construction, including material hauling and spotting, pole setting and framing, and conductor stringing activities. The newly-constructed structure pads are used to provide a stable and dry platform for the material staging and equipment. The foundations are constructed. The pole materials and other materials will be hauled to each specific structure site. The pole sections will then be jacked together on the ground. The insulators and hardware will then be framed up on the ground. Next, the top pole section will be lifted by crane and placed on the foundation base that was previously set. Poles will typically be installed 30 to 50 feet below ground.

20. The conductor stringing activities occur next. Reels of wire and wire tensioning equipment will be brought to the job site and set up at dead-end locations. The construction crew will install stringing blocks or pulleys on each structure where the conductor will be pulled through. Once the conductors are pulled in, the conductor will be secured at the dead-end

locations, and the wires will be sagged and tensioned appropriately to maintain vertical clearances. Finally, the conductor is secured to the insulator attachment and the pulleys and blocks are removed from each structure.

21. The final stage of construction is the cleanup stage. This involves a final inspection of the area to remove the silt fences and hay bales, to clean up excess spoils from the foundation excavations, to repair or replace fencing, and to replace and secure gates.

22. Throughout construction, in areas where soil is disturbed, sedimentation management techniques, such as the use of silt screens and hay bales, or other best management practices, will be employed as necessary to minimize potential impacts from erosion and sedimentation.

23. While each phase of construction will typically take up to two weeks at each structure location, the construction crew will normally be active for two to four days at a typical structure location. Construction for the entire project is expected to last approximately eighteen months.

E. Methodology for Choosing Applicants' Preferred Corridor

24. The Applicants established a multidisciplinary team to identify a corridor for the transmission line. The role of this team was to select a certifiable corridor based on an evaluation of environmental, land use, socioeconomic, engineering, and cost

considerations. The multidisciplinary team was composed of experts in land use, engineering, and environmental disciplines and included representatives of the two utilities, outside legal counsel, and various consultants.

25. Corridor selection methodologies were designed to be integrative of multidisciplinary siting criteria, regional and objective in decision-making, sensitive to social and environmental conditions, responsive to regulatory requirements, reflective of community concerns and issues, and capable of accurate documentation and verification.

26. The team engaged in four major steps: to establish and define the project study area; to conduct regional screening and mapping; to select and evaluate candidate corridors using both quantitative and qualitative analysis; and finally to select the preferred corridor and identify the boundaries of that corridor. The team's work included a number of field studies, data collection, internal meetings, and meetings with the public.

27. In defining the project study area, the multidisciplinary team identified the starting and ending points for the proposed transmission line, the locations of existing and planned substations in the area, the service boundaries of the utilities, and major roads in the area.

28. In regional screening, the multidisciplinary team gathered data from a variety of sources to identify the different types of opportunities and potential constraints for siting a transmission line in the project study area. The multidisciplinary team developed a regional screening map, received in evidence as Applicants' Exhibit 24, which was prepared by the team using generally publicly available information including Geographic Information System (GIS) mapping. The map data were collected from various state agencies and local governments; information was gathered from the Florida Geographic Data Library (which distributes GIS data), the Florida Natural Areas Inventory, and most of the agencies involved in this proceeding. Various environmental and land use data were mapped as were existing infrastructure, archaeological/historical sites, and information gathered on roads, railroads, rivers, waterbodies, and the like. These represented primarily potential siting constraints or siting issues within a particular study area. The regional screening map was then used to identify route segments.

29. Using the regional screening information, the multidisciplinary team selected corridor segments for consideration using quantitative analysis of the data gathered in the earlier stages of the process. The team then evaluated the corridor segments using both quantitative and qualitative

criteria. The multidisciplinary team gathered data on siting opportunities and constraints within the study area and identified sixty line segments which could be assembled into a total of 1,187 potential candidate corridor combinations. Using a predefined set of quantitative environmental, land use, and engineering criteria, each corridor segment was measured for those resources. Using the weights developed by the team for each criterion, the weights were applied and tabulated for all candidate corridor segments. The candidate corridors were then ranked in order from best to worst based on the quantitative weighted scores.

30. Once the rankings were performed, the five highest-ranked candidate corridors were subjected to further quantitative and qualitative evaluation. These candidate corridors were evaluated using predetermined qualitative criteria which do not lend themselves easily to quantification, such as safety and buildability.

31. At the completion of the evaluation, the multidisciplinary team deliberated and ultimately chose a preferred corridor. Once the preferred corridor was selected, the multidisciplinary team defined the boundaries of the Applicants' Preferred Corridor. The team developed corridor boundaries of varying widths - - narrowing the corridor to avoid

siting constraints or widening the corridor to take advantage of siting opportunities.

F. Public Involvement in the Corridor Selection Process

32. The Applicants engaged in an extensive public outreach program, the purpose of which was to inform and educate the public about the project and to invite public input from the public in the corridor selection process. The public outreach program included a series of direct mailings, surveys, open houses, extensive communications with regulatory agency officials and local elected officials, a project web page by both Applicants and the Department, a toll-free telephone number, and newsprint advertisements.

33. There were two direct mailings as a part of the public outreach program. The first mailing went to approximately 7,900 customers with a map of the project area, a fact sheet, and an invitation to one of three open houses to be held. One open house was conducted in Polk County, while two open houses were conducted in Lake County in close proximity to the project area. Following the completion of the open house process, a second mailing was sent to approximately 6,000 customers identifying the preferred corridor chosen during the evaluation process. The names of the mailing recipients were obtained by identifying the properties located within certain distances in both directions from the centerline of the candidate corridors. The

Property Appraisers' Offices of Polk, Osceola, Orange, and Lake Counties were a source for this information. The mailings were also sent to the homeowners' associations along the candidate corridors.

34. The Applicants plan additional mailings if a corridor for the transmission line is certified. Additional informational open houses will also be held, and the transmission structures and potential locations will be identified at that time so the public can be informed.

35. As part of the public outreach, the project also ran a series of five advertisements in local newspapers. The first series of advertisements notified the public of the three open houses: a newspaper advertisement was run on August 9, 2007, in The Lakeland Ledger, The Winter Haven News Chief, and The Orlando Sentinel for the first open house, and for the second and third open houses, a newspaper advertisement was run in The Lakeland Ledger, The Hometown Sun, The Winter Haven News Chief, The Report, West Orange Times, South Lake Press, Osceola News-Gazette, and The Orlando Sentinel.

36. The second advertisements notified the public of the filing of the Application in December 2007 in The Tampa Tribune, The Lakeland Ledger, The Winter Haven News Chief, The Osceola-News Gazette, and The Orlando Sentinel. In March 2008, a third series of advertisements was run in The Orlando Sentinel, The

Lakeland Ledger, and The Osceola News-Gazette to notify the public of the certification hearing. In June 2008, a fourth series of advertisements was run notifying the public of the rescheduling of the certification hearing; this advertisement was published by OIC in the Osceola County section of The Orlando Sentinel and this advertisement was published by the Applicants in The Lakeland Ledger and the Orange County section of The Orlando Sentinel. Finally, in August 2008, a notice regarding the second week of hearing was published in The Osceola News-Gazette, The Lakeland Ledger, and The Orlando Sentinel.

37. Copies of the Application were maintained for public inspection during the certification process at the TECO offices in Tampa and Winter Haven and at the PEF offices in St. Petersburg, Lake Wales, and Lake Buena Vista. In addition, a copy of the Application was provided to the Hart Memorial Central Library and Ray Shanks Law Library in Kissimmee, the Orlando Public Library in Orlando, the Bartow Public Library in Bartow, and the Auburndale Public Library in Auburndale.

38. The public outreach program was integrated into the corridor selection process. The public's input included information about anticipated road expansions and modifications as well as proposed residential developments in the project area.

39. A few members of the public complained at the public hearing that they were unaware that a new transmission line corridor was being proposed until just before the hearing. However, the evidence shows that long before the certification hearing, information concerning this process was widely disseminated through advertisements, open houses, mass mailings, surveys, and meeting with regulatory agencies and local elected officials. See Findings of Fact 33 and 35-37, supra.

G. Detailed Description of the Applicants' Preferred Corridor

40. The Applicants' Preferred Corridor provides significant opportunities for co-location with other linear facilities such as roads, a natural gas pipeline, and other transmission lines. Co-location is an important benefit from the perspectives of engineering, ecology, and land use because it results in reduced impacts from the new transmission line, reduced ROW needs (or land acquisition needs) for the new line, reduced need for new clearing of land, reduced impacts to wetlands by co-locating with previously-disturbed areas, and reduced incremental impacts by co-locating with an existing linear facility.

41. The Preferred Corridor exits the existing Lake Agnes substation and extends east-northeast approximately 18.9 miles within, adjacent to, or in proximity to the OUC McIntosh-Taft

transmission line ROW, which generally runs parallel to I-4, across Polk and Osceola Counties. The Applicants' Preferred Corridor crosses Loughman Road (now known as Ronald Reagan Boulevard) and Old Lake Wilson Road. In this area, the land use includes water utility infrastructure in addition to I-4 and the OUC transmission line. Near the Lake Agnes substation, the land uses include some individual residences, as well as undeveloped land now used as pasture, citrus groves, and the Hilochee Wildlife Management Area. The land uses along I-4 and the OUC transmission line include residential development, undeveloped land north of Ronald Reagan Boulevard and south of Champions Gate and U.S. Highway 27, and the Hilochee Wildlife Management Area. In the area of U.S. Highway 27, there is considerable residential development and mixed-use development to the east and west of the Preferred Corridor. The ecological communities in this area include the Green Swamp Wildlife Management Area (also known as Green Swamp East Tract) north of I-4 and the Hilochee Wildlife Management Area. The ecological communities within the Preferred Corridor include residential areas, improved pastures, forested wetlands, pine flatwoods, and freshwater marsh.

42. At the I-4 and SR 429 interchange, the Preferred Corridor turns and continues north along the Daniel Webster Western Beltway (SR 429), co-locating in the SR 429 ROW for

approximately 8.6 miles. The land uses beginning at the I-4 and SR 429 interchange and northward to U.S. Highway 192 include residential communities on both the east and west sides of the Preferred Corridor, a large regional wastewater treatment facility on the west side of the Preferred Corridor, and undeveloped land, as well as resort, residential, and commercial development. Between U.S. Highway 192 and the planned Gifford substation, the land uses include a number of mixed-use and residential developments and golf course communities on the east and west side of the Preferred Corridor, as well as undeveloped land that is used for agricultural purposes and as part of wetland systems. The ecological communities in this area include the large Davenport Creek Swamp to the west of SR 429 and Reedy Creek to the east of SR 429; ecological communities within the Preferred Corridor include citrus, improved pasture, pine and pine oak forest, freshwater wetlands, and forested wetlands.

43. The Applicants have agreed to adjust the eastern corridor boundary in the area south of Funie Steed Road/Oak Island Road and north of the southern boundary of the OIC residential development to be 55 feet east of the edge of the SR 429 ROW, rather than the originally-proposed 100 feet east of the edge of the SR 429 ROW. This adjustment was made at the hearing in response to concerns raised by OIC. By making this

adjustment, the impact on the homes in the OIC community will be substantially diminished.

44. The Applicants' Preferred Corridor then turns west and exits the SR 429 ROW just north of Western Way and enters into PEF's existing easement, crossing Hartzog Road into the planned Gifford substation. The land use in this area of the planned Gifford substation is predominantly additional utility infrastructure associated with wastewater treatment facilities.

45. The width of the Preferred Corridor varies along its entire length to provide flexibility within the corridor to avoid or minimize impacts to such areas as large wetland areas, to provide flexibility at large road intersections, and to take advantage of existing land patterns, property boundaries, and linear facilities.

V. OIC's Application for Alternate Corridor

A. Selection of the OIC Alternate Corridor

46. Mr. von Behren indicated in testimony that he and fellow board members of the OIC Community Owners Association selected the OIC Alternate Corridor. Unlike the Applicants' Preferred Corridor, the OIC Alternate Corridor was selected by OIC without any public outreach to obtain input from the community. OIC did, apparently, pay attention to the property interests of OIC. No OIC property is traversed by, or adjacent to, the OIC Alternate Corridor; however, the OIC Alternate

Corridor bisects the existing, nearby residential Emerald Island development.

B. Detailed Description of OIC Alternate Corridor

47. The OIC Alternate Corridor is located in the Osceola County portion of the Project and commences at the Applicants' Preferred Corridor 2,000 feet south of Funie Steed Road/Oak Island Road on the west side of SR 429, where it turns northwest and proceeds approximately 2,000 feet, and then turns northeast and proceeds approximately 2,000 feet, in an approximate horseshoe shape, to rejoin the Applicants' Preferred Corridor along SR 429.

48. The land uses and ecological communities within the SR 429 portion of the OIC Alternate Corridor were described above in Finding of Fact 42, supra.

49. The land use of the OIC Alternate Corridor where it deviates from the Applicants' Preferred Corridor is undeveloped lands between two components of the Emerald Island residential development. The undeveloped lands include pasture, shrub and brushland, and undisturbed, undeveloped freshwater marsh and forested wetlands. A portion of these wetlands provide water treatment and storage functions for the Lake Tohokepaliga Water Authority and are held within a conservation easement and subject to a water use permit.

C. Design and Construction of Transmission Line within OIC Alternate Corridor

50. The design and construction techniques described in Findings of Fact 13 through 23 will be the same if the transmission line is constructed, operated, and maintained in the OIC Alternate Corridor. The parties have stipulated that the transmission line can be constructed, operated, and maintained in the OIC Alternate Corridor in compliance with the regulatory and industry standards listed in Finding of Fact 16.

VI. Agencies' Review of Corridors Proper for Certification and Resulting Determinations

51. State, regional, and local agencies with regulatory authority over the Project reviewed the Application and submitted to Department reports concerning the impact of the Project on matters within their respective jurisdictions, as required by Section 403.526(2), Florida Statutes. Eleven regulatory agencies reviewed the Application, and nine reviewing agencies submitted reports on the Project, and have proposed Conditions of Certification. None of the agencies involved in the review process recommended that the proposed corridor be denied or modified. On May 30, 2008, the Department issued its Written Analysis on the Project, incorporating the reports of the reviewing agencies and proposing a compiled set of Conditions of Certification. The Department recommended that

the Applicants' Preferred Corridor be certified subject to appropriate conditions of certification.

52. Three reviewing agencies submitted supplemental reports on the OIC Alternate Corridor on or before June 20, 2008, again proposing Conditions of Certification. On July 7, 2008, the Department issued its Supplemental Written Analysis on the Project, including the OIC Alternate Corridor, incorporating the supplemental reports of the reviewing agencies and proposing a comprehensive set of Conditions of Certification. The Department did not recommend approval of the OIC Alternate Corridor, although it found the alternate corridor to be certifiable. In its Supplemental Written Analysis, the Department stated:

Given the alternate corridor is likely to have a higher impact on the environment as well as additional cost, the Department does not find the alternate corridor to be superior to the preferred corridor, although either corridor is ultimately certifiable.

Department Exhibit 3, page 4.

VII. Whether and Extent to Which Each Corridor Will Comply with Criteria in Section 403.529(4), Florida Statutes

A. Ensure Electric Power System Reliability and Integrity

53. The PSC decided that there are regional transmission system limitations in the I-4 corridor between Polk County and the greater Orlando area due to projected load growth in the 2008-2011 timeframe. The PSC found that the new 230 kV line is

needed by June 2011 to preserve electric system reliability and integrity in order to:

(a) provide additional transmission transfer capability along the I-4 corridor to move electricity generated in the Polk County region to load centers in the Greater Orlando area in a reliable manner consistent with the North American Electric Reliability Council (NERC) and the Florida Reliability Coordinating Council (FRCC) and other applicable standards;

b) serve the increasing load and customer base in the projected service area; and

(c) potentially provide for another electrical feed via a separate Right of Way (ROW) path, thereby reducing the impact of a loss of the existing transmission facilities on a common ROW.

The PSC further decided that the transmission line is the most cost-effective and efficient means to both increase the capability of the existing 230 kV network and serve the increasing load and customer base in the Central Florida region.

54. The transmission line can be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor to provide electric power system reliability and integrity. Even so, the evidence shows that the Applicants' Preferred Corridor better provides electric power system reliability and integrity than does the OIC Alternate Corridor because the Applicants' Preferred Corridor will involve a shorter length of line and because the Applicants' Preferred

Corridor will involve fewer maintenance issues and access issues.

55. The Applicants' Preferred Corridor is shorter by 1,472 feet than the OIC Alternate Corridor. Unnecessary length added to a transmission circuit introduces further exposure to the forces of nature which could impact reliability of a transmission line. The greater the line length, the greater the exposure or risk to reliability.

56. The OIC Alternate Corridor also involves additional maintenance issues and access issues not raised by the Applicants' Preferred Corridor. For example, there is a risk of flooding because some of the areas within the OIC Alternate Corridor are used for overflow for nearby retention ponds. This flooding could cause an access problem if emergency or routine repairs or maintenance were needed.

B. Meet the Electrical Energy Needs of the State in an Orderly, Economical and Timely Fashion

57. The transmission line can be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor to meet the electrical energy needs of the State in an orderly, economical, and timely fashion. Nevertheless, the Applicants' Preferred Corridor better meets the State's electrical energy needs in an orderly, economical, and timely fashion than does the OIC Alternate Corridor because

the OIC Alternate Corridor adds significant cost to the overall project and long-term costs associated with operation and maintenance. The OIC Alternate Corridor is estimated to cost \$4.4 million more for construction than the Applicants' Preferred Corridor. The cost differential is caused by the need for more easement area, more access roads, the nature of the soils, the foundation requirements, the heavy angle requirements, and more wetlands mitigation of the OIC Alternate Corridor. For example, because the OIC Alternate Corridor is primarily located in wetlands, the OIC Alternate Corridor will require larger poles and larger pole foundations, which involve higher costs.

58. In addition to the \$4.4 million construction cost differential, the OIC Alternate Corridor will also involve additional maintenance costs throughout the life of the transmission line because there will be a higher cost and effort required for vegetation management and access road maintenance in the OIC Alternate Corridor than will be required for the Applicants' Preferred Corridor.

C. Comply with the Applicable Nonprocedural Requirements of Agencies

59. Construction, operation, and maintenance of the transmission line within either the Applicants' Preferred

Corridor or the OIC Alternate Corridor will comply with applicable nonprocedural requirements of agencies.

a. Electrical and Magnetic Fields

60. The transmission line can be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor in compliance with the Department's standards for Electric and Magnetic Fields in Florida Administrative Code Rule Chapter 62-814, which limit the electric and magnetic fields associated with new transmission lines.

61. The Applicants propose to use four different configurations for the transmission line depending upon the location. The options include a 230 kV single circuit on a 100-foot ROW, a 230 kV single circuit on the 185-foot ROW including the existing OUC McIntosh-Taft 230 kV line, a 230 kV single circuit roadside, and a 230 kV single circuit roadside with an additional 35-foot easement including the existing Boggy Marsh-Gifford and Four Corners-Gifford 69 kV lines. For each of these configurations, the Department's rule requires that the electric and magnetic fields (or energy forces) within the ROW and at the edge of the ROW be calculated to ensure compliance. The electric field is a field that is generated by voltage of a conductor, expressed as a kilovolt meter (kV/m). The magnetic

field is a field produced by the current traveling along the conductor, expressed in milligauss (mG).

62. Those portions of Florida Administrative Code Rule Chapter 62-814 that are applicable to this Project establish maximum values for electric and magnetic fields. Compliance with the electric and magnetic field requirements was calculated for each of the configurations that may be utilized for the Project. The results were then compared to the requirements of Florida Administrative Code Rule 62-814.450(3). The maximum expected values from all configurations for the electric fields and for the magnetic fields are all below the values set forth in the rule.

63. The maximum voltage and current that is anticipated for the line during its life are used in making the calculations. However, it is highly unlikely that this condition would occur. It is anticipated that the maximum condition would occur less than five percent of the time while the transmission line is operating. In order to operate at the maximum condition, the conductor must be operating at its maximum temperature (which requires an extreme weather condition), and there would also need to be some type of system disturbance (such as an outage in the region). Levels for electric fields will be less at the normal operating levels and magnetic fields about fifty percent less.

64. The levels of electric and magnetic fields from the transmission line are similar to the levels that would be expected to result from common household appliances.

b. Noise

65. Transmission lines can generate audible noise as a result of build-up of particles on the conductor. During periods of fair weather dust can collect on the conductor and that may cause low levels of audible noise. When rain is experienced, the dust is washed off but replaced with water droplets on the conductor that create a condition that results in slightly higher levels of audible noise. The noise levels experienced during rainfall events are temporary, and the noise is reduced as soon as the water droplets evaporate from the conductor.

66. The expected levels of noise are generally calculated using an industry-standard software program called the Bonneville Power Administration Field Effects Program. The calculations performed for the transmission line show that the maximum audible noise levels at the edge of the ROW would range up to a high of 37.6 dBA. This noise level is similar to the upper noise level in a library, and less than the living room noise in a suburban area. Also, during rainfall events, when the maximum noise levels are expected, the rain will tend to mask the sound from the transmission line.

67. The calculated noise levels for the transmission line indicate that the noise levels that will be produced will not be a significant issue. Further, the calculated noise levels will comply with all applicable audible noise ordinances in Polk, Osceola, and Orange Counties.

D. Be Consistent with Applicable Local Government Comprehensive Plans, If Any

68. The transmission line can be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor to be consistent with applicable provisions of local government comprehensive plans, if any.

69. The Polk County Comprehensive Plan identifies electric transmission and distribution facilities as a permitted use in all land use categories. The Osceola County Comprehensive Plan and the City of Auburndale Comprehensive Plan identify utility and public facilities as allowable uses in all land use categories provided that the TLSA standards and other regulatory standards are met. The Orange County Comprehensive Plan identifies utility and public facilities as allowable uses in all land use categories.

70. The Reedy Creek Improvement District Comprehensive Plan identifies that utility corridors are allowable uses where no other alternatives are feasible. The PSC found that the Applicants considered four alternatives to the Project and none

were feasible. Further, the Applicants considered a number of alternatives in the corridor selection process and considered the OIC Alternate Corridor and selected the Applicants' Preferred Corridor as the best choice among the various corridors. See Finding of Fact 102, infra.

71. After certification of this project, the transmission line will be located and constructed entirely within established rights-of-way, including easements acquired after corridor certification. Construction of transmission lines on such established ROWs is excepted from the definition of "development" in Section 163.3164(6), Florida Statutes. Accordingly, the provisions of the local comprehensive plans related to "development" that have been adopted by the local governments crossed by the transmission line are not applicable to this project.

72. No variances or exemptions from applicable state or local standards or ordinances are needed for the project.

E. Effect a Reasonable Balance Between the Need for the Lake Agnes-Gifford Transmission Line as a Means of Providing Abundant Low-Cost Electrical Energy and the Impact Upon the Public and the Environment Resulting from the Location of the Lake Agnes-Gifford Transmission Line and Construction, Operation, and Maintenance of the Transmission Line

73. The Applicants' Preferred Corridor was chosen using a multidisciplinary team of experts to minimize impacts upon the public and the environment.

a. Impacts Upon the Public

74. The land uses found in the area of the Applicants' Preferred Corridor and the OIC Alternate Corridor are compatible with transmission lines; there are many locations throughout Florida where transmission lines similar to the proposed transmission line coexist with these land use patterns.

75. Both the Applicants' Preferred Corridor and the OIC Alternate Corridor are appropriate locations for a transmission line from a land use perspective, but the Applicants' Preferred Corridor is a better location in relation to impacts upon the public.

aa. Co-location with Existing Linear Facilities

76. The Applicants' Preferred Corridor is co-located with existing linear facilities for nearly its entire length. In choosing among the candidate corridors considered by the multidisciplinary team, the Applicants' Preferred Corridor was chosen with reference to maximizing co-location with existing linear features, including transmission lines, highways, and natural gas pipelines. Co-location is advantageous because the existing linear facilities often provide existing access, minimizing the need for new access roads, the need for new clearing, and the need for further encumbrance of additional land. By following these existing linear features, the Applicants' Preferred Corridor conforms to existing and future

development patterns and minimizes intrusion into surrounding areas. Further, there is less of an incremental difference in impacts from adding a linear facility to an area of existing linear facilities than from adding a linear facility to a presently unencumbered area.

77. In contrast, the OIC Alternate Corridor follows an area of undeveloped land and thus does not offer the advantages of co-location.

bb. Impacts upon Residential Development

78. In choosing among the candidate corridors, minimizing the number of homes within the corridor was a significant criterion considered by the multidisciplinary team.

79. It is an advantage for the OIC Alternate Corridor over the Applicants' Preferred Corridor that the OIC Alternate Corridor has fewer homes within the corridor than does the Applicants' Preferred Corridor. However, it is a disadvantage for the OIC Alternate Corridor that it bisects two components of the Emerald Island residential development.

80. The impacts of the Applicants' Preferred Corridor on OIC homes is minimal. The "residents" of the OIC development are predominantly short-term renters or vacationers who will be in proximity to the transmission line for only a few weeks' duration. (Many of the homes are owned by citizens of the United Kingdom who rent the properties to vacationers visiting

the area. There are, however, three permanent year-round residents in the development, including Mr. von Behren.) The Applicants have adjusted the eastern corridor boundary to no more than 55 feet from the edge of the SR 429 ROW in the vicinity of the OIC development. Further, the Applicants have committed that, if the Applicants' Preferred Corridor is certified, there will be no existing homes within the eventual transmission line ROW.

81. PEF's engineering expert testified that the Applicants' preferred location for the transmission line within the Applicants' Preferred Corridor in the vicinity of the OIC development is to be on the west side of SR 429, which would not impact any OIC homes. If that location is not feasible, the Applicants' preferred location for the transmission line within the Applicants' Preferred Corridor in the vicinity of the OIC development is to be on the east side of SR 429, with poles located 15 feet inside the DOT's ROW for SR 429, in which case the only property rights that the Applicants would need outside the DOT ROW would be no more than 30 feet for an overhanging aerial easement and access rights. These commitments by the Applicants mean that there are only three or four properties within OIC where the Applicants might need an aerial and access easement for the transmission line; the pole would be no nearer to those homes than approximately thirty feet. This evidence

demonstrates that there will be very little impacts on the OIC residential development.

82. Further, OIC raised concerns about existing vegetation with the OIC residential development. Those concerns are misplaced because PEF's engineering expert explained that the Applicants would avoid any vegetation that exists outside the SR 429 ROW, and that any vegetation that would be replaced would be within the SR 429 ROW.

cc. Minimizing the Length of Transmission Lines in the Landscape

83. The length of a transmission line in the landscape is important because it is a land use consideration to minimize the amount and length of linear facilities in the landscape. The shorter the linear facility, the less potential effects of the linear facility. This is an advantage for the Applicants' Preferred Corridor because it is shorter than the OIC Alternate Corridor.

dd. Impacts to Conservation Lands

84. The Applicants' Preferred Corridor has the advantage of avoiding conservation lands while the OIC Alternate Corridor in contrast crosses lands held for conservation purposes. The conservation lands include a parcel held for use by Osceola County as a stormwater retention and conveyance system, a parcel held by Emerald Island Resort as a conservation area, a parcel

owned by the Lake Tohopekaliga Water Authority held in a conservation easement by SFWMD, and a parcel subject to a water use permit. The conservation easement expressly prohibits the construction of utility infrastructure within its boundaries. Although SFWMD's conservation easement could be amended by the underlying property owner to allow for crossing by the OIC Alternate Corridor, SFWMD prefers the Applicants' Preferred Corridor because it better avoids and minimizes impacts to wetlands.

ee. Impact on Property Values

85. At the public portion of the certification hearing, several members of the public testified in opposition to the Applicants' Preferred Corridor. A number of those testifying, including Mr. von Behren, expressed concern about the impact of the Project on property values, and the desire to have the Applicants seek another route. Although these concerns are genuine, the impact on property values is not a subject for consideration at this hearing.

b. Impacts Upon the Environment

86. The transmission line, whether constructed, operated, and maintained in the Applicants' Preferred Corridor or the OIC Alternate Corridor, will comply with all applicable state, regional, and local nonprocedural regulations, including the wetland regulatory standards applicable to such projects.

87. The Applicants have committed to a variety of Conditions of Certification that require extensive measures to eliminate or minimize the potential environmental impacts. For example, within forested wetlands, the Applicants have committed to using restrictive clearing practices, removing only tall-growing trees and leaving understory (the lower layer of plants growing under a higher layer of plants) and root mats in place within the ROW. The Applicants have also committed to the use of existing access roads through wetland areas to the greatest extent practicable, and the construction of at-grade access roads where conditions allow. In addition, the Applicants have committed to compensatory mitigation to offset the loss of wetland functions, if any.

88. Further, if the transmission line is constructed in either the Applicants' Preferred Corridor or the OIC Alternate Corridor, the transmission line design will allow for variable span length to avoid wetland impacts by spanning those areas upland-to-upland.

89. Both the Applicants' Preferred Corridor and the OIC Alternate Corridor are appropriate locations for a transmission line from an environmental perspective, but the Applicants' Preferred Corridor is a better location in relation to impacts upon the environment.

aa. Impacts to Vegetative Communities, Including Wetlands

90. The Applicants' Preferred Corridor will have minimal environmental impact. Construction of the line within the Applicants' Preferred Corridor will cause minimal adverse ecological impacts for several reasons:

(i) regional screening was conducted to minimize inclusion of areas of ecological constraints, such as eagles' nests, undisturbed wetland habitat, protected species habitat, and forested areas;

(ii) the width of the corridor provides flexibility when the final ROW is selected to avoid ecological resources within the corridor;

(iii) because of the corridor's co-location with existing rights-of-way, there is a prevalence of developed areas within the Applicants' Preferred Corridor;

(iv) where the Preferred Corridor traverses areas of natural vegetation, it does so largely in previously-disturbed areas, minimizing the amount of needed clearing and new access roads; and

(v) wetlands will be avoided by spanning them to the extent practicable.

91. With respect to the Green Swamp, an area of 870 square miles, the Applicants' Preferred Corridor minimizes impacts by co-locating with the OUC transmission line ROW. Other candidate

corridors considered by the multidisciplinary team would have involved clearing of undisturbed forested wetlands, including areas of mature cypress domes.

92. In contrast, the transmission line will have more adverse environmental impacts if constructed, operated, and maintained in the OIC Alternate Corridor than the Applicants' Preferred Corridor because of the prevalence of undisturbed wetland habitat within the OIC Alternate Corridor as compared to the previously-disturbed habitat along SR 429 within the Applicants' Preferred Corridor. Construction of the transmission line within the OIC Alternate Corridor would result in greater forested and herbaceous wetland impacts and require greater alteration to previously-undisturbed areas.

bb. Protected Species

93. The Applicants have committed to a number of conditions of certification protecting species whether the Applicants' Preferred Corridor or the OIC Alternate Corridor is certified. For example, the Applicants have agreed to conduct pre-clearing surveys of the final ROW for protected species, and to consult with the Florida Fish and Wildlife Conservation Commission, the United States Fish and Wildlife Service, and the Department if any species are located within the ROW to address avoidance and mitigation measures.

94. Impacts to listed plant and animal species from construction of the transmission line within the Applicants' Preferred Corridor are expected to be minimal because the corridor includes primarily previously-impacted areas which have limited suitability as protected species habitat and because of the Applicants' commitment to conduct pre-clearing species surveys. The Applicants' Preferred Corridor avoids or minimizes intrusion into the undisturbed wildlife habitats due to its co-location with existing linear facilities for almost its entire length.

95. The current condition and relative value of function of the habitat within the Applicants' Preferred Corridor is generally minimal from a wildlife ecology and protected species perspective because it has been previously-disturbed through construction of major roadways. In the areas of undisturbed lands, the Applicants' Preferred Corridor is co-located with existing utility rights-of-way including a transmission line and natural gas pipeline that already disturb the area.

96. The gopher tortoise is a protected species that has been documented to be located within the Applicants' Preferred Corridor and the OIC Alternate Corridor. Gopher tortoise habitat typically is not compromised by construction of transmission lines due to the relatively small ground footprint of disturbance and the maintenance of low vegetation within the

ROW, which is suitable habitat for gopher tortoises. Thus, the transmission line is not expected to have significant impact on gopher tortoises.

97. The impacts to protected species will be greater in the OIC Alternate Corridor than the Applicants' Preferred Corridor. The Applicants' Preferred Corridor includes two known locations of protected species; transmission lines are compatible with the habitat for these species. In addition, the habitat within the Preferred Corridor is not suitable for most protected species because it is previously disturbed where vegetation communities have already been cleared and converted to roadside ROW. In contrast, the OIC Alternate Corridor consists predominantly of undisturbed wetlands, which is habitat that is highly suitable for a number of protected species. Although there are no Florida Natural Areas Inventory-documented locations of protected species within the OIC Alternate Corridor, there are four field-documented protected species within the OIC Alternate Corridor. Further, the habitat is highly suitable for protected species because it is largely undisturbed, much is held in conservation easement, and it includes forested and herbaceous wetlands.

cc. Floodplains

98. The 100-year floodplain is an area, regulated by the Department and the water management districts, that demarks the

area that would be inundated in severe flood events. The Applicants are required to provide compensating floodplain storage to offset the loss, if any, of floodplain storage caused by fill needed for the transmission line; this requirement is designed to avoid any flooding of adjacent properties that might be caused by the Project. Because of this requirement, one of the goals in corridor selection was to minimize impacts to the 100-year floodplain. Only a small portion of the Applicants' Preferred Corridor is located within the 100-year floodplain, while a large portion of the OIC Alternate Corridor is located within the 100-year floodplain. Further, the portions of the Applicants' Preferred Corridor that are located within the 100-year floodplain are located in areas that have been previously disturbed by the construction of SR 429 and would likely not involve significant further impacts to the 100-year floodplain.

dd. Archaeological and Historical Resources

99. The Applicants utilized information from the Department of State, Division of Historical Resources (DHR), to identify potential archeological and historical resources within the Applicants' Preferred Corridor. A number of locations were identified as a result of the information and the Applicants have committed, through the Conditions of Certification, to perform a cultural resources survey when the actual ROW is located. If any artifacts are discovered, the Applicants will

notify the Department and DHR and consult with DHR to determine appropriate action. There is no difference between the impacts to cultural resources of the Applicants' Preferred Corridor and the OIC Alternate Corridor.

c. The Need for the Lake Agnes-Gifford Line as a Means of Providing Abundant Low-Cost Electrical Energy

100. The transmission line can be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor to meet the need for the transmission line as a means of providing reliable, economically efficient electric energy as determined by the PSC.

101. The PSC determined that the proposed line is needed taking into account the factors set forth in Section 403.537, Florida Statutes. The PSC found that the Applicants evaluated four alternatives to the proposed transmission line. All of the alternatives were transmission modifications to the proposed ROW that used a portion of, or the entire existing, common ROW. The PSC accepted the Applicants' rejection of the alternatives primarily because of economic and reliability concerns. The PSC found that the proposed line will assure the economic well-being of Florida's citizens by serving projected new electric load in the region and improving the region's electric reliability by minimizing the region's exposure to single contingency events.

d. Reasonable Balance Between the Need for the Lake Agnes-Gifford Line and the Impacts of the Line upon the Public and the Environment

102. Expert witnesses in the fields of land use, engineering, and ecology with specializations in transmission line siting, permitting, design, and reliability have compared the corridors proper for certification and all concluded that the Applicants' Preferred Corridor effects a better balance between the need for the transmission line and the impacts of the line on the public and the environment from the perspective of their expertise than does the OIC Alternate Corridor.

VIII. Conditions of Certification

103. The transmission line can and will be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor in compliance with the Conditions of Certification, which are found in the Department's Exhibit 3.

104. The Conditions of Certification establish a post-certification review process through which the final right-of-way, access road, and structure locations will be reviewed by agencies with regulatory authority over the project.

105. The Applicants have agreed to the Conditions of Certification to minimize land use and environmental impacts of the construction, operation, and maintenance of the transmission line. The parties agree that the Conditions of Certification

are consistent with applicable non-procedural requirements of the state, regional, and local agencies with regulatory jurisdiction over the transmission line, and that such conditions should be imposed on the certification, if granted, for either of the corridors under consideration in this proceeding.

#### CONCLUSIONS OF LAW

106. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 403.527(1), Fla. Stat.

107. This certification proceeding was held pursuant to the Transmission Line Siting Act, Sections 403.52 through 403.5365, Florida Statutes, and Florida Administrative Code Rule Chapter 62-17, Part II. The intent of this certification process is:

to fully balance the need for the transmission lines with the broad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing abundant low-cost electrical energy and the impact on the public and the environment resulting from the location of the transmission line corridor and the construction and maintenance of the transmission lines.

§ 403.521, Fla. Stat. To implement this intent, the Legislature has set forth specific requirements for the PSC to determine the need for the proposed transmission line and address other

matters within its jurisdiction, for other various agencies to prepare reports and studies regarding matters within their jurisdiction, for publication of notice of the application and certification proceeding, for third parties to have an opportunity to offer alternate corridor routes for consideration, and for criteria to be considered in determining whether an application should be approved in whole, approved with modification or conditions, or denied. See §§ 403.526, 403.527, 403.5271, 403.529, and 403.537, Fla. Stat.

108. Except as noted, all parties identified in Finding of Fact 1 have standing in this proceeding.

109. The Applicants have the burden of proving that, under the criteria of Section 403.529(4)(a)-(e), Florida Statutes, their Proposed Corridor for the Lake Agnes-Gifford transmission line should be certified as proposed based upon a preponderance of the evidence presented at the certification hearing. See, e.g., Fla. Dept. of Transp. v. J.W.C Co., Inc., et al., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

110. The evidence in this proceeding demonstrates compliance with the procedural requirements of the TLSA, including the notice requirements for the certification and public hearings. It is noted that Applicants voluntarily engaged in an extensive public outreach program that included

additional newspaper notices, extensive mailings, and establishment of project websites.

111. In deciding whether the Application should be approved, approved with conditions, or denied, the Siting Board must determine whether, and the extent to which, the location of the corridor and the construction and maintenance of the transmission line in the corridor will:

- (a) Ensure electric power system reliability and integrity;
- (b) Meet the electrical energy needs of the state in an orderly and timely fashion;
- (c) Comply with nonprocedural requirements of agencies;
- (d) Be consistent with applicable local government comprehensive plans; and
- (e) Effect a reasonable balance between the need for the transmission line as a means of providing abundant low-cost electrical energy and the impact upon the public and the environment resulting from the location of the transmission line corridor and the maintenance of the transmission lines.

§ 403.529(4), Fla. Stat.

IX. Criteria to Evaluate Applicants' Preferred Corridor versus the OIC Alternate Corridor

A. Compliance with Section 403.529(4)(a), Florida Statutes.

112. The PSC determined the need for a new 230 kV transmission line between the existing Lake Agnes substation and

the planned Gifford substation in Order No. PSC-07-0784-FOF-EI issued on September 26, 2007.

113. The PSC decided that there are regional transmission system limitations in the I-4 corridor between Polk County and the greater Orlando area due to projected load growth in the 2008-2011 timeframe. The PSC further found that the new 230 kV transmission line is needed by June 2011 to preserve electric system reliability and integrity in order to provide additional transmission capability along the I-4 corridor to move electricity generated in Polk County to the greater Orlando area, to serve the increasing load and customer base in the project area, and to provide another electrical feed via a separate ROW. The PSC decided that the transmission line is the most cost-effective and efficient means to both increase the capability of the existing 230 kV network and serve the increasing load and customer base in the Central Florida region.

114. The PSC's determination of need for the project is binding on all parties to the certification proceeding. See § 403.537(1)(d), Fla. Stat. Based upon the PSC Order determining need, a prima facie showing that the transmission line would enhance electric system reliability, integrity, and restoration of service has been made. The PSC found that the Project meets the criteria of Section 403.529(4)(a), Florida Statutes.

115. The transmission line can be constructed, operated, and maintained in either the Applicants' Preferred Corridor or the OIC Alternate Corridor to provide electric power system reliability and integrity. Nevertheless, the Applicants' Preferred Corridor better provides electric power system reliability and integrity than does the OIC Alternate Corridor because the Applicants' Preferred Corridor will involve a shorter length of line and because the Applicants' Preferred Corridor will involve fewer maintenance issues and access issues.

116. Because of the reliability concerns associated with the OIC Alternate Corridor, the Applicants' Preferred Corridor better provides electric power system reliability and integrity.

B. Compliance with Section 403.529(4)(b), Florida Statutes.

117. The PSC determined that the transmission line is needed to be in-service by June 2011; the evidence demonstrates that, with the projected 18-month construction schedule for the transmission line, it will meet the electrical energy needs of the State in an orderly and timely fashion whether the Applicants' Preferred Corridor or the OIC Alternate Corridor is certified.

118. However, the evidence also demonstrates that the Applicants' Preferred Corridor will meet Florida's energy needs

in a more economical fashion than the OIC Alternate Corridor because of the significant cost differential in construction and in long-term operation and maintenance of the transmission line.

119. Because of the substantially higher costs associated with the OIC Alternate Corridor, the Applicants' Preferred Corridor better meets Florida's electrical energy needs in an orderly, economical, and timely fashion.

C. Compliance with Section 403.529(4)(c), Florida Statutes.

120. The evidence supports a conclusion that the construction, operation, and maintenance of the transmission line in either the Applicants' Preferred Corridor or the OIC Alternate Corridor in conformance with the recommended Conditions of Certification will comply with the applicable nonprocedural requirements of all agencies.

D. Compliance with Section 403.529(4)(d), Florida Statutes.

121. The evidence supports a conclusion that there are no inconsistencies between the proposed transmission line and the comprehensive plans adopted by local governments whose jurisdictions are crossed by the proposed transmission line, whether the Applicants' Preferred Corridor or the OIC Alternate Corridor is certified.

E. Compliance with Section 403.529(4)(e), Florida Statutes.

122. The overall impacts upon the public and the environment of the Project have been shown to be minimal, particularly when balanced with the significant electrical energy requirements that will be satisfied by construction and operation of the transmission line.

123. Both the Applicants' Preferred Corridor and the OIC Alternate Corridor provide a reasonable balance between the need for the transmission line and its impact upon the public and the environment; however, the evidence demonstrates that the Applicants' Preferred Corridor will have the least adverse impacts upon the public and the environment and provides the best balance between the need for the line and the impacts of the line.

124. The Applicants' Preferred Corridor's impacts upon the public and the environment will be minimized by the co-location with existing linear facilities. Further, the Applicants have committed to limiting the impacts on the homes within the OIC residential development. In contrast, the OIC Alternate Corridor imposes significant additional impacts upon the public and the environment by: bisecting the adjacent Emerald Island residential development; imposing significant additional costs which must be borne by utility ratepayers; intruding upon lands

held for conservation purposes; imposing additional impacts on undisturbed forested and herbaceous wetlands; imposing additional impacts on the habitat for protected species; and imposing additional impacts on the 100-year floodplain.

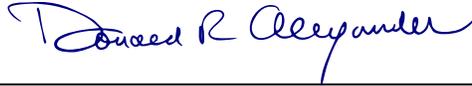
125. Based upon a preponderance of the evidence presented at the certification hearing, the Applicants have met their burden of proving that their Preferred Corridor for the transmission line should be certified as proposed, subject to the Conditions of Certification, as set forth in Department Exhibit 3.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Siting Board enter a Final Order approving Tampa Electric Company and Progress Energy Florida's Lake Agnes-Gifford 230 kV Transmission Line Application for Certification subject to the Conditions of Certification set forth in Department Exhibit 3.

DONE AND ENTERED this 22nd day of October, 2008, in  
Tallahassee, Leon County, Florida.



---

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NOTICE OF RIGHT TO FILE EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.

**STATE OF FLORIDA  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**



**LAKE AGNES-GIFFORD 230-kV TRANSMISSION LINE  
PROGRESS ENERGY FLORIDA, Inc.  
TAMPA ELECTRIC COMPANY**

**CONDITIONS OF CERTIFICATION**

**Certified February 5, 2009**

**Exhibit B**

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## **I. CERTIFICATION CONTROL**

A. Under the control of these Conditions of Certification, Progress Energy Florida and Tampa Electric Company (PEF/TECO) will construct and operate a 230-kilovolt (kV) transmission line extending approximately 27.5 miles from TECO's existing Lake Agnes substation in Polk County, Florida to PEF's planned Gifford Substation in Orange County, Florida.

B. These Conditions of Certification, unless specifically amended or modified, are binding upon PEF/TECO and shall apply to the construction, operation and maintenance of the certified facility. If a conflict should occur between the design criteria of this project and the Conditions of Certification, the Conditions shall prevail unless amended or modified. In any conflict between any of these Conditions of Certification, the more specific condition governs.

I. Citation: Section 403.531, F.S. (2007).

## **II. APPLICABLE RULES**

The construction and operation of the certified transmission line shall be in accordance with all applicable non-procedural provisions of Florida Statutes and Florida Administrative Code, including, but not limited to, the following regulations, except to the extent a variance, exception, exemption or other relief is granted in the final order of certification: Chapter 403 (Environmental Control), Florida Statutes (F.S.), and Chapters 40D-4 and 40E-4 (Individual Environmental Resource Permits), 40D-9 (District Land Use Rules), 62-4 (Permits), 62-17 Part II (Transmission Line Siting Act), 62-301 (Surface Waters of the State), 62-302 (Surface Water Quality Standards), 62-330 (Environmental Resource Permitting), 62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters), 62-343 (Environmental Resource Permit Procedures), 62-345 (Uniform Mitigation Assessment Method) and 62-814 (Electric and Magnetic Fields), Florida Administrative Code (F.A.C.).

II. Citation: Section 403.531, F.S. (2007).

## **III. DEFINITIONS**

Unless otherwise indicated herein, the meaning of terms used herein shall be governed by the definitions contained in Chapters 373 and 403, Florida Statutes, and any regulation adopted pursuant thereto. In the event of any dispute over the meaning of a term used in these conditions which is not defined in such statutes or regulations, such dispute shall be resolved by reference to the most relevant definitions contained in any other state or federal statute or regulation or, in the alternative by the use of the commonly accepted meaning as determined by the Department. In addition, the following shall apply:

A. "Application" shall mean the joint Application for Corridor Certification for the Lake Agnes-Gifford transmission line by the Progress Energy Florida and Tampa Electric Company.

B. "Complete" shall mean the post-certification filing provides the data required by the relevant Condition of Certification.

C. "DCA" shall mean the Florida Department of Community Affairs.

D. "DEP" or "Department" shall mean the Florida Department of Environmental Protection.

E. "DHR" shall mean the Florida Department of State, Division of Historical Resources.

F. "DOT" shall mean the Florida Department of Transportation.

G. "Emergency conditions" shall mean urgent circumstances involving potential adverse consequences to human life or property as a result of weather conditions or other calamity, and necessitating new or replacement transmission line components or access facilities.

H. "Facility" or "Project" shall mean the Lake Agnes-Gifford 230-kV electrical "transmission line" as defined in Section 403.522(21), F.S.

I. "Feasible" or "practicable" shall mean reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs.

J. "FWC" shall mean the Florida Fish and Wildlife Conservation Commission.

K. "Licensee" shall mean PEF/TECO, which has obtained a certification order for the subject electrical transmission line.

L. "Listed species" shall mean the species listed in Table 2.3-2 or Table 2.3-3 of the Application as endangered, threatened or species of special concern by FWC, the Florida Department of Agriculture and Consumer Services, or the U.S. Fish and Wildlife Service.

M. "PEF" shall mean Progress Energy Florida, one of the two Applicants/Licensees.

N. "Post-certification submittal" shall mean a submittal made by PEF and/or TECO pursuant to a Condition of Certification.

O. "ROW" shall mean the transmission line right-of-way to be selected by PEF/TECO within the certified corridor in accordance with the Conditions of Certification.

P. "SWFWMD" shall mean the Southwest Florida Water Management District.

Q. "SFWMD" shall mean the South Florida Water Management District.

R. "State water quality standards" shall mean the numerical and narrative criteria applied to specific water uses or classifications set forth in Chapter 62-302, F.A.C., as revised through December 7, 2006.

S. "TECO" shall mean Tampa Electric Company, one of the two Applicants/Licensees.

T. "Transmission line" shall mean the PEF/TECO Lake Agnes-Gifford 230-kV transmission line.

U. "Wetlands" shall mean those areas meeting the definition set forth in Section 373.019(25), F.S., as delineated pursuant to Chapter 62-340, F.A.C., and ratified by Section 373.4211, F.S.

III. Citation: Section 403.531, F.S. (2007).

#### **IV. DESIGN AND PERFORMANCE CRITERIA**

Certification, including these Conditions of Certification, is predicated upon preliminary design ranges and performance criteria. Final engineering design will be within the range described in the Application and explained at the certification hearing. Conformance to those criteria, unless specifically modified in accordance with Section 403.5315, Florida Statutes, and Rule 62-17.680, F.A.C., is binding upon PEF/TECO in the design, construction, operation and maintenance of the certified transmission line. In any instance where a conflict occurs between the Application's design criteria and the Conditions of Certification, the Conditions shall prevail.

IV. Citation: Section 403.531, F.S. (2007).

#### **V. RIGHT OF ENTRY/MONITORING**

A. Upon presentation of credentials or other documents as may be required by law, PEF and/or TECO shall allow authorized representatives of DEP or other agencies with jurisdiction over a portion of the ROW:

1. At reasonable times, to enter upon the ROW in order to monitor activities within their respective jurisdictions for purposes of assessing compliance with this certification; or
2. During business hours, to enter PEF and/or TECO's premises in which records are required to be kept under this certification; and to have access to and copy any records required to be kept under this certification.

B. When requested by DEP, on its own behalf or on behalf of another agency with regulatory jurisdiction, PEF/TECO shall within 10 working days or such longer period as may be mutually agreed upon by DEP and the Licensees furnish any information required by law, which is needed to determine compliance with the certification. If PEF/TECO becomes aware that relevant facts were not submitted or were incorrect in the Application or in any report to DEP or other agencies, such facts or information shall be corrected promptly.

V. Citation: Section 403.531, F.S. (2007).

## **VI. EMERGENCY REPORTING**

Replacement of ROW access roads or transmission lines constructed under this certification necessitated by emergency conditions shall not be considered a modification pursuant to Section 403.5315, F.S. (2007). An oral report of the emergency shall be made to DEP as soon as possible. Within 14 calendar days after correction of an emergency, which would require PEF and/or TECO to perform an activity not in accordance with the Conditions of Certification, a report to DEP shall be made outlining the details of the emergency and the steps taken for its temporary relief. The report shall be a written description of all of the work performed and shall set forth any pollution control measures or mitigative measures which were utilized or are being utilized to prevent pollution of waters, harm to sensitive areas, or alteration of archaeological or historical resources.

VI. Citation: Section 403.531, F.S. (2007).

## **VII. CERTIFIED CORRIDOR**

The certified corridor is attached hereto in Attachment 1.

VII. Citation: Section 403.531, F.S. (2007).

## **VIII. PROCEDURES FOR POST-CERTIFICATION SUBMITTALS**

### **A. Purpose of Submittals**

Conditions of Certification which provide for the post-certification submittal of information to DEP or other agencies by PEF/TECO are for the purpose of facilitating the agencies' monitoring of the effects arising from the location of the ROW and the construction and maintenance of the transmission line. This monitoring is for DEP to assure, in consultation with other agencies with applicable regulatory jurisdiction, continued compliance with the Conditions of Certification, without any further agency action.

**B. Filings**

1. All post-certification submittals of information by PEF/TECO are to be filed with the DEP Siting Coordination Office, the DEP Central and Southwest District Offices, and any other agency that is required to receive a submittal by any Condition of Certification. As required by Section 403.5317, F.S., each post-certification submittal will be reviewed by each agency with regulatory authority over the matters addressed in the submittal on an expedited and priority basis.

2. The Licensee shall provide within 90 days after certification a complete summary of those submittals identified in the Conditions of Certification where due-dates for information required of the Licensee are identified. Such submittals shall include, but are not limited to, monitoring reports, management plans, wildlife surveys, etc. The summary shall be provided to the DEP Siting Coordination Office and any affected agency or agency subunit to which the submittal is required to be provided, in a sortable spreadsheet, via CD and hard copy, in the format identified below or equivalent.

Condition Number	Requirement and timeframe	Due Date	Name of Agency or agency subunit to whom the submittal is required to be provided

**C. Completeness**

DEP shall promptly review each post-certification submittal for completeness. This review may include consultation with the other agency(ies) receiving the post-certification submittal with regulatory jurisdiction over the matter addressed in the

submittal. DEP's finding of completeness shall specify the area of the right-of-way affected, and shall not delay further processing of the post-certification submittal for non-affected areas. PEF/TECO may request that DEP Siting Coordination Office hold a meeting within 15 days after submittal to discuss any completeness issues. PEF/TECO may continue to supplement the submittal with additional information through the 25<sup>th</sup> day.

If any portion of a post-certification submittal is found to be incomplete, PEF/TECO shall be so notified. Failure to issue such a notice within 30 days after filing of the submittal shall constitute a finding of completeness. Subsequent findings of incompleteness, if any, shall address only the newly filed information.

#### **D. Interagency Meetings**

DEP may conduct an interagency meeting with other agencies, which received a post-certification submittal. The purpose of such an interagency meeting shall be for the agencies with regulatory jurisdiction over the matters addressed in the post-certification submittal to discuss whether reasonable assurance of compliance with the Conditions of Certification has been provided. Failure of DEP to conduct an interagency meeting or any agency to attend an interagency meeting shall not be grounds for DEP to withhold a determination of compliance with these Conditions nor to delay the timeframes for review established by these Conditions. At DEP's request, PEF/TECO shall conduct a field inspection with the agency representative in conjunction with the interagency meeting.

#### **E. Reasonable Assurances of Compliance**

DEP shall give written notification on an expedited and priority basis, but in any event within no more than 90 days, to PEF/TECO and the other agency(ies) to which the post-certification information was submitted of its determination whether there is reasonable assurance of compliance with the conditions of certification. If it is determined that reasonable assurance has not been provided, PEF/TECO shall be notified with particularity of the deficiencies and possible corrective measures suggested. Failure to notify PEF/TECO in writing within 90 days of receipt of a complete post-certification submittal shall constitute a compliance determination.

#### **F. Commencement of Construction**

If DEP does not object within the time period specified in paragraph E. above, PEF/TECO may begin construction pursuant to the terms of the Conditions of Certification and the subsequently submitted construction details.

#### **G. Water Quality Certification**

For each post-certification submittal which addresses matters within DEP's environmental resource permitting jurisdiction, DEP shall provide to the U.S. Army

Corps of Engineers (USCOE) a letter in accordance with DEP Rule 62-17.665(7)(f), F.A.C. This letter shall be sent concurrently with a determination of compliance pursuant to paragraph E. above, or immediately upon request by PEF/TECO more than 90 days after the filing of a complete post-certification submittal addressing matters within DEP's environmental resource permitting jurisdiction.

#### **H. Coastal Zone Consistency**

Pursuant to Section 380.23, F.S., DEP's letter to the USCOE under paragraph G above constitutes the state's concurrence that the licensed activity or use is consistent with the federally approved program under the Florida Coastal Management Act.

#### **I. Revisions to Design Previously Reviewed for Compliance**

The Licensee shall submit to DEP, for its review, any proposed revisions to the project's site specific design that were previously reviewed for compliance with these Conditions during the post-certification review process. Such submittals shall include the same type of information required for the original submittal and shall be submitted prior to construction/implementation.

#### **J. Variation to Submittal Requirements**

DEP, in consultation with the appropriate agencies that have regulatory authority over a matter to be addressed in a post-certification submittal, and PEF/TECO may jointly agree to vary any of the post-certification submittal requirements, provided the information submitted is sufficient to provide reasonable assurances of compliance with these Conditions of Certification.

#### **K. Disputes**

Any agency which received a post-certification submittal pursuant to these Conditions may dispute a determination that a submittal provides reasonable assurances of compliance with the Conditions of Certification made by DEP on matters within that agency's jurisdiction by following the procedures set forth in Chapter 120, F.S. The agency's statement disputing DEP's determination shall state with particularity the location to which the agency's dispute relates. Work in areas other than the location to which the agency's dispute relates will not be affected by the agency's dispute.

VIII. Citations: Sections 403.531, 403.5317, 373.413, 373.416, 120.569, and 380.23, F.S. (2007); Rules 62-17.600, 62-17.665, 40D-4.101, and 40E-4.101, F.A.C., 62-17.191, F.A.C.

### **IX. DISPUTE RESOLUTION**

If a situation arises in which mutual agreement cannot be reached between DEP and another agency receiving a post-certification submittal or between DEP and PEF and/or TECO regarding compliance with the Conditions of Certification, then the matter

shall be immediately referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provisions of Chapter 120, F.S. PEF/TECO or DEP may request DOAH to establish an expedited schedule for the processing of such a dispute.

IX. Citations: Sections 403.5317, 403.531, and 120.57, F.S. (2007).

## **X. SEVERABILITY**

The provisions of this certification are severable, and if any provision of this certification or the application of any provision of this certification to any circumstance is held invalid, the remainder of the certification or the application or such provision to other circumstances shall not be affected thereby.

X. Citation: Section 403.531, F.S. (2007).

## **XI. ENFORCEMENT**

A. The terms, conditions, requirements, limitations and restrictions set forth in these Conditions of Certification are binding and enforceable pursuant to Sections 403.141, 403.161, and 403.533, F.S. Any noncompliance by PEF and/or TECO with a Condition of Certification constitutes a violation of Chapter 403, F.S., and is grounds for enforcement action, permit termination, permit revocation, or permit revision. The Licensee is placed on notice that the Department will review this certification periodically and may initiate enforcement action for any violation of these Conditions.

B. All records, notes, monitoring data and other information relating to the construction or operation of this certified transmission line which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the certified source arising under the Florida Statutes or Department rules, except where such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

C. The Licensees shall build the proposed Lake Agnes-Gifford Transmission Line separately, with each Licensee providing for work in its own service territory. Any violation of any condition by one of the Licensees shall not be construed to constitute a violation by the other Applicant for purposes of enforcement. This does not preclude the Licensees from using the same contracted construction company as long as the construction tasks are managed separately by each Licensee.

XI. Citations: Section 403.141, 403.161 and 403.533, F.S. (2007).

## **XII. REVOCATION OR SUSPENSION**

This certification may be suspended or revoked pursuant to Section 403.532, Florida Statutes.

XII. Citation: Section 403.532, F.S. (2007).

### **XIII. PROPERTY RIGHTS**

Except as provided in Section 403.531(3)(b), F.S., the issuance of this certification does not convey any property rights in either real or personal property, or any exclusive privileges thereto. The Licensee shall obtain title, lease, easement, or right of use from the State of Florida to any sovereignty submerged or other state-owned lands occupied by the right-of-way for the transmission line. Section 403.531(3)(b), F.S., provides that, on certification, any license, easement, or other interest in state lands, except those the title of which is vested in the Board of Trustees of the Internal Improvement Trust Fund, shall be issued by the appropriate agency as a ministerial act.

XIII. Citation: Section 403.531, F.S. (2007).

### **XIV. PROCEDURAL RIGHTS**

No term or Condition of Certification shall be interpreted to preclude the post-certification exercise by the Licensee of whatever procedural rights it may have under Chapter 120, F.S.

XIV. Citation: Chapter 120, F.S. (2007).

### **XV. MODIFICATION OF CERTIFICATION**

A. Pursuant to Section 403.5315(1), F.S., Section 120.569(2)(n), F.S., and Rule 62-17.680, F.A.C., the Siting Board hereby delegates the authority to the Secretary of the Department of Environmental Protection to modify these Conditions of Certification, after notice and receipt of no objection by a party or other substantially affected person. In addition, the Secretary of the Department is delegated the authority to modify conditions as follows:

1. The Secretary of the Department may modify any condition of this certification after notice and opportunity for hearing.
2. The Secretary of the Department may grant modifications necessary to meet licensing conditions or requirements imposed on PEF/TECO by any federal regulatory agency. PEF/TECO shall notify DEP at least 30 days prior to the issuance of the federal license that would require such a modification, if known, or in any event, as soon as the federal agency notifies PEF/TECO.
3. The Secretary of the Department may authorize the reconstruction of the ROW or transmission line necessary to avoid or mitigate an emergency condition. Such a modification shall be obtained only when an emergency replacement of a

transmission line pursuant to Rule 62-17.695, F.A.C., is not required or when an emergency replacement must be further modified after the emergency conditions requiring the original reconstruction are no longer present.

B. DEP shall give written notice to the parties to the original certification, at their last address of record, of any requests for modification filed by PEF/TECO.

XV. Citations: Sections 120.569(2)(n) and 403.5315, F.S. (2007); Rules 62-17.680 and 62-17.695, F.A.C.

## **XVI. SUBMITTALS AND NOTICES REQUIRED BY CONDITIONS**

Post-certification submittals and notices shall be sent, as specified in these Conditions, to the agencies specified in these conditions at the following addresses, unless PEF/TECO and DEP are notified in writing of an agency's change in address for such submittals and notices:

Florida Department of Environmental Protection  
Siting Coordination Office, MS 48  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

Florida Department of Environmental Protection  
Southwest District Office  
13051 N Telecom Parkway  
Temple Terrace, FL 33637-0926

Florida Department of Environmental Protection  
Central District Office  
3319 Maguire Boulevard, Suite 232  
Orlando, Florida 32803-3767

Florida Department of Community Affairs  
Office of the Secretary  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Florida Fish & Wildlife Conservation Commission  
Office of Policy and Stakeholder Coordination  
620 South Meridian Street  
Tallahassee, FL 32399-1600

East Central Florida Regional Planning Council  
Office of Executive Director  
631 North Wymore Road, Suite 100  
Maitland, Florida 32751

Central Florida Regional Planning Council  
Office of Executive Director  
555 East Church Street  
Bartow, Florida 33830-3931

Southwest Florida Water Management District  
Office of General Counsel  
2379 Broad Street  
Brooksville, FL 34604-6899

South Florida Water Management District  
3301 Gun Club Road  
Office of General Counsel  
West Palm Beach, Florida 33406

Florida Department of Transportation  
Director of Planning and Production, District 1  
P. O. Box 1249  
Bartow, FL 33831-1249

Orange County Environmental Protection Division  
800 Mercy Drive, Suite 4  
Orlando, FL 32808

Osceola County Planning Department  
1 Courthouse Square  
Kissimmee FL, 34741

Polk County Attorney Office  
330 W Church St  
Bartow, FL 33830

Florida Department of Agriculture and Consumer Services  
Division of Forestry  
3125 Conner Boulevard  
Tallahassee, Florida 32399-1650

U.S. Fish and Wildlife Services  
1339 20<sup>th</sup> Street  
Vero Beach, FL 32960

Orlando Utilities Commission  
500 South Orange Avenue  
Orlando, FL 32801

XVI. Citation: Section 403.531, F.S. (2007).

## **XVII. TRANSFER OF CERTIFICATION**

This certification is transferable, upon Department approval, to an entity determined to be competent to construct, operate and maintain the transmission line in accordance with these Conditions of Certification. A transfer of certification of all or part of a certified facility shall be initiated by the Licensee's filing with the Department and the parties a notice of intent to transfer certification to a new licensee. The notice of intent shall identify the intended new certification holder or licensee and the identity of the entity responsible for compliance with the certification. The provisions of Chapter 120, F.S., will apply to the Department's approval or denial of the transfer.

XVII. Citations: Section 403.531, F.S. (2007); Chapter 120, F.S.; Rule 62-17.211 , F.A.C.

## **XVIII. ROW LOCATION**

A. PEF and TECO shall co-locate the transmission line ROW to the extent feasible within or adjacent to existing public rights-of-way for those portions of the corridor which include such existing public rights-of-way. To the extent a widened road right-of-way has been acquired by the appropriate governmental agency at the time of final transmission line design, PEF/TECO's design shall reflect that new widened right-of-way.

B. To the extent feasible PEF/TECO shall locate the transmission line right-of-way so as to avoid the taking of homes.

C. The portions of the transmission line that are located in the Green Swamp Protection Area of Critical Concern shall be constructed and operated in accordance with the applicable terms and conditions of the Green Swamp Protection Area of Critical Concern Program pursuant to Chapter 28-27, F.A.C.

D. The portions of the transmission line that cross the State-owned Hilochee Wildlife Management Area (WMA), outside of the existing OUC right-of-way, shall comply with the State's linear facilities policy, which requires impact minimization and provides for payment consistent with Section 253.02, F.S. (2008).

E. To the extent feasible and consistent with good engineering design and practices, the Licensees shall use best management practices to minimize impacts to pre-existing natural features and minimize tree removal and trimming of vegetation.

## **XIX. PROCESS FOR REVIEW OF ROW LOCATION**

A. Prior to the finalization of the ROW location, three copies of the most recent available aerial photographs at a scale of 1" = 400' with wetland locations generally identified shall be submitted to DEP Siting Coordination Office, and one copy each to DEP Southwest and Central District Offices, SFWMD, SWFWMD, ECFRPC, CFRPC, DOT, DCA, Osceola County, Polk County and Orange County, delineating the certified corridor, and the selected transmission line ROW. In addition, PEF/TECO shall note on the aerial photographs new construction within the corridor that has occurred since the photograph was taken. PEF/TECO shall notify all parties of such filing and, if needed, shall meet with DEP to discuss the ROW location. This information may be submitted in segments. The agencies receiving the aerial photographs from PEF/TECO shall have an opportunity to review the photographs and to notify DEP, within 12 days of PEF/TECO's submittal of the aerial photographs to the agencies, of any apparent conflicts with the requirements of the Conditions of Certification. However, this paragraph shall not operate to avoid the need for post-certification submittals and compliance reviews otherwise required by the Conditions of Certification.

B. After review of the aerial photographs and comments from the other reviewing agencies, if DEP Siting Coordination Office has reason to believe that the construction of the transmission line, access roads or pads within PEF/TECO's designated ROW cannot be accomplished in compliance with the Conditions of Certification, PEF/TECO shall be so notified in writing, with copies to other parties to the certification proceeding of the particular basis for DEP's conclusion, and possible corrective measures which would bring the Project into compliance. If such notice is not received within 15 days of PEF/TECO's submittal of the aerial photographs to the agencies, PEF/TECO may proceed with design of the transmission line on the noticed ROW.

C. The acquisition of a particular ROW or the expenditure of funds toward acquisition of a particular ROW prior to the agencies' review pursuant to this condition will be at PEF/TECO's risk, and no party will be estopped by such acquisition to seek disapproval of the construction of the transmission line or access road within the ROW in accordance with these Conditions of Certification.

D. After PEF/TECO has acquired interest in the entire length of the transmission line ROW, PEF/TECO shall:

1. File a statement with the clerk of the circuit court for each county through which the corridor passes certifying that all lands required for the transmission line ROW within the corridor have been acquired. PEF/TECO shall also file with the

county Planning Department a map at the scale of 1" = 400' showing the boundaries of the acquired ROW.

2. File with DEP Siting Coordination Office a map at a scale of 1" = 400' showing the boundaries of the acquired ROW, if such boundaries are different from those shown in the filing required by paragraph A above. Such maps shall comply with the requirements of paragraph A. If the boundaries have not changed, PEF/TECO shall file a statement with DEP Siting Coordination Office accordingly.

E. Once the ROW has been determined, PEF/TECO will submit, to the Orange and Polk County Planning Departments and the County Attorney's Office for Osceola County, information that is consistent with County ROW permits for the portions of the line which pass through each affected county.

XIX. Citations: Sections 403.531 and 403.5312, F.S. (2007); Rule 62-17.600(4), F.A.C.

## **XX. ROW SURVEYS**

### **A. Listed Species**

1. *Listed Species Occurring or Potentially Occurring in the Corridor:*  
State-listed species occurring or potentially occurring within the preferred corridor footprint include but are not limited to the wood stork (*Mycteria americana*), which is listed as endangered; the bald eagle (*Haliaeetus leucocephalus*), the eastern indigo snake (*Drymarchon corais couperi*), Florida sandhill crane (*Grus canadensis pratensis*), the gopher tortoise (*Gopherus polyphemus*), and southeastern American kestrel (*Falco sparverius paulus*), all listed as threatened; gopher frog (*Rana capito*), Florida burrowing owl (*Athene cunicularia floridana*), limpkin (*Aramus guarauna*), little blue heron (*Egretta caerulea*), roseate spoonbill (*Platalea ajaja*), snowy egret (*Egretta thula*), tricolored heron (*Egretta tricolor*), white ibis (*Eudocimus albus*), and Sherman's fox squirrel (*Sciurus niger shermani*), all listed as species of special concern.

2. *Listed Species Survey.*  
Before land clearing and construction activities within the ROW, where access is available, PEF/TECO shall conduct an assessment for listed species in the final right-of-way which will note all habitat, occurrence or evidence of listed species in the right-of-way. Listed species to be included in this survey shall include those listed as endangered, threatened or of special concern by Florida Fish and Wildlife Conservation Commission or those listed as endangered or threatened by U.S. Fish and Wildlife Service.

a. This survey shall be conducted in accordance with USFWS/FFWCC guidelines and methodologies by a person or firm that is knowledgeable and experienced in conducting flora and fauna surveys for listed species.

b. This survey shall identify any wading bird colonies within one-half mile of the project ROW that may be affected.

c. This survey shall identify locations of breeding locations, nests, and burrows for listed wildlife species. Nests and burrows may be recorded with GPS coordinates, identified on an aerial photograph, and submitted with the final listed species report. Although nests and burrows may be recorded individually with GPS, the FWC prefers that a protection radius surrounding nest sites and burrows be included, rather than individual nests and burrows, and be physically marked so that clearing and construction will avoid impacting them.

d. This survey shall include an estimate of the acreage and percent cover of each existing vegetation community (Florida Land Use, Cover and Forms Classification System, or FLUCFCS, at the third degree of detail) including a wildlife-based habitat classification scheme such as the Comprehensive Wildlife Conservation Strategy (FWC 2005), Descriptions of Vegetation and Land Cover Types (FWC 2004), or Natural Communities Guide (FNAI 1990) of each community that is contained within the final ROW prior to land clearing and construction activities using GIS.

### 3. *Listed Species Locations*

Where any suitable habitat and evidence is found of the presence of listed species along the ROW, PEF/TECO will report those locations to, and confer with, the appropriate regulatory agencies for possible additional pre-clearing surveys and to identify potential mitigation, or avoidance recommendations. If pre-clearing surveys are required, they shall be timed to be reasonably compatible with the construction schedule, considering the in-service date specified in the Public Service Commission's need determination. PEF/TECO will not construct in areas where evidence of listed species was identified during the initial survey until the particular listed species issues have been resolved.

a. *Listed Wildlife Species*: If listed wildlife species are found, their presence shall be reported to the DEP Siting Coordination Office, the DEP Southwest and Central District Offices, the FFWCC's Office of Policy and Stakeholder Coordination, the SWFWMD, the SFWMD, Osceola County, Orange County, Polk County and U.S. Fish and Wildlife Service.

b. *Listed Vegetation Species*: If listed vegetation species are found on public land or water, their presence shall be reported to the DEP Siting Coordination Office and the Florida Department of Agriculture and Consumer Services. Listed wildlife species and listed vegetation species on public land or water shall not be disturbed, if practicable.

c. *Species Management Plan*: If avoidance is not practicable, PEF/TECO shall consult with DEP, FFWCC, and, if necessary, the U. S. Fish and Wildlife Service for listed wildlife species, and with the Florida Department of Agriculture and Consumer Services for listed vegetation species on public land or water, to determine the steps appropriate for the species involved which are to be taken to avoid, minimize, mitigate, or otherwise appropriately address impacts within each agency's respective jurisdiction. For wildlife species, these steps shall be memorialized in a Wildlife Management Plan and submitted to DEP, FFWCC, Osceola, Polk and Orange Counties.

## **B. Cultural Resources**

After the ROW has been selected, PEF/TECO shall conduct a survey of sensitive cultural resource areas, as determined in consultation with the Department of State, Division of Historical Resources (DHR). A qualified cultural resources consultant will identify an appropriate work plan for this project based on a thorough review of the certified corridor. Prior to beginning any field work, the work plan will be reviewed in consultation with DHR. Upon completion of the survey, the results will be compiled into a report which shall be submitted to DHR. If practicable, sites considered to be eligible for the National Register shall be avoided during construction of the transmission line and access roads, and subsequently during maintenance of the ROWs. If avoidance by the proposed ROW of any discovered sites is not practicable, impact shall be mitigated through archaeological salvage operations or other methods acceptable to DHR, as appropriate.

If historical or archaeological artifacts are discovered at any time within the project site, PEF/TECO shall notify the DEP Southwest and Central District offices and the Bureau of Historic Preservation, Division of Historical Resources, R.A. Gray Building, Tallahassee, Florida 32399-0250, telephone number (850) 487-2073, and PEF/TECO shall consult with DHR to determine appropriate action.

XX. Citations: Sections 267.061 and 403.531, and Chapter 372, F.S. (2007).

## **XXI. ACTIVITIES IN WETLANDS**

### **A. Informational Submittals for Activities Within Wetlands or Other Surface Waters**

1. Prior to the projected commencement of construction of any portion of the transmission line in wetlands or other surface waters, PEF/TECO shall provide to DEP's Southwest and Central District Environmental Resource Permitting Sections and the U.S. Army Corps of Engineers all information necessary for a complete *Joint Environmental Resource Permit application*, DEP Form No. 62-343.900(1), with copies to the East Central Florida Regional Planning Council, Osceola and Orange Counties, SFWMD and SWFWMD for informational purposes. Information may be submitted by

discrete sections of the ROW; PEF/TECO shall consult with the DEP to identify mutually agreeable sections for purposes of wetlands submittals. The completed form for each section shall be reviewed pursuant to Condition VIII. "Construction" in this context shall include land clearing, excavation, the placement of structure pads, access roads, culverts, fill materials, and related activities. Construction activities shall not include the stringing of conductors.

2. PEF/TECO shall provide reasonable assurance that the joint construction, operation and maintenance of the proposed facilities, including any access roads and structures constructed within wetlands and other surface waters, satisfy the criteria set forth in Rules 40D-4.301, 40D-4.302, 40E-4.301, and 40E-4.302, F.A.C., and the applicable portions of Part B, Basis of Review of SWFWMD's and SFWMD's Environmental Resource Permitting Information Manual. Pursuant to Rule 62-17.665(7)(d), F.A.C., the Licensee shall provide sufficient information on a post-certification basis to demonstrate that there is reasonable assurance of compliance with SWFWMD and SFWMD substantive requirements.

3. The post-certification submittal shall include a signed and sealed Professional Land Surveyors' survey of wetland and surface water areas as defined pursuant to Chapter 62-340, F.A.C., and verified by appropriate agency staff. Available SWFWMD- and SFWMD- approved wetland and surface water verifications within the boundaries of the PEF/TECO ROW may be used and reproduced for this delineation consideration.

4. Upon issuance of this Certification, the SWFWMD and SFWMD will require modification of any permits issued by the SWFWMD and SFWMD to any entities whose activities will be affected by the proposed project to reflect the activities authorized by this Certification.

XXII.A. Citations: Sections 373.414, 373.416, 403.526(2)(b)3., 403.522(18), 403.526(2)(a)5., F.S. (2007); Rules 40D-4.091, 40D-4.101, 40D-4.301, 40D-4.302, 40E-4.091, 40E-4.101, 40E-4.301, 40E-4.302, and 62-17.665(7)(d), F.A.C.; and Chapter 62-340, F.A.C.

## **B. Consultation with Wetland Agencies**

At the request of PEF/TECO, DEP Siting Coordination Office may conduct an interagency meeting for PEF/TECO to consult with the wetlands resource permitting staffs of DEP and SWFWMD, SFWMD and the FWC's staff, prior to the finalization of possible access road locations, transmission line structure locations, and the establishment of water control structure types and general locations in wetlands which are to be reflected in any post-certification submittals. At DEP's request, PEF/TECO shall conduct a field inspection with the agencies' staff representatives in conjunction with the interagency meeting.

XXI.B. Citation: Section 403.523, F.S. (2007).

## **C. Reduction and Elimination of Impacts**

### *1. Access Roads, Culverts, and Structures*

a. Where the ROW crosses wetlands or other surface waters, PEF/TECO shall utilize adjacent existing access roads and public roads for access to the transmission line ROW for construction, operation and maintenance purposes to the extent practicable.

b. All access roads and structure pads which must be constructed in areas where an existing access road or public road is not available shall be constructed in a manner which reduces or eliminates adverse impacts to on-site and adjacent wetlands to the extent practicable. PEF/TECO shall be deemed to have satisfied this condition if the access and finger roads satisfy the criteria of Rules 40D-4.301, 40D-4.302, 40E-4.301, and 40E-4.302, F.A.C.

c. Where practicable, PEF/TECO shall make an effort to reduce or eliminate impacts to wetlands and other surface waters within the certified corridor except as otherwise provided in section 3.2.1.2 of Part B, Basis of Review of SWFWMD's Environmental Resource Permitting Information Manual and section 4.2.1.2 of the Basis of Review of SFWMD. The length of the span between transmission line structures shall be varied as appropriate and other design changes, which shall include but not be limited to a reduction in pad size, elimination of access roads, use of finger fill from existing ROWs and/or modification of construction techniques shall be considered to eliminate or reduce wetland impacts, except where otherwise provided by sections 3.2.1.2 and 4.2.1.2, respectively.

d. To the extent practicable and utilizing the typical structures shown in the Application, access roads, culverts and structures shall be located to avoid conflict with existing underground utilities properly documented in county records.

e. In the event temporary fill is used to facilitate construction of the transmission line, the temporary fill shall be removed where necessary to minimize impacts to wetlands or habitats of listed species.

### *2. Wetland Clearing*

a. PEF/TECO shall use only restrictive clearing practices during construction and maintenance of the transmission line where it crosses forested wetlands. Restrictive clearing, as used in this condition, is the removal of vegetation by hand, usually with chain saws, or with low-ground-pressure shear or rotary machines to reduce soil compaction and damage to ground cover. These methods may be used alone or in combination, as may be appropriate for specific sites. All cut vegetation must be removed from wetlands unless other techniques, such as mulching or burning in place, are agreed to by DEP Siting Coordination Office and Orange County (for portions

of the line located in Orange County) in the post-certification review process. Restrictive clearing includes the removal of vegetation from areas extending from the transmission line pole centerline to 50 feet on either side, and in the structure pad areas (approximately 64 feet by 150 feet). Removable construction matting in conjunction with best management practices may be used in wetlands to support equipment. The remainder of the ROW in wetland areas, beyond 50 feet on either side of the poles and the structure pads, shall not be cleared; however, vegetation that has an expected mature height greater than 14 feet may be removed. In addition, danger timber (trees or limbs likely to contact a conductor if fallen) within or outside the right-of-way may be removed.

b. Tree stumps under the conductors, within access roads and in the structure pads may be removed, sheared, or ground to 6 inches below the ground line to allow for travel and construction activities. Tree stumps in the area beyond 20 feet on either side of the outer conductors shall be left in place to preserve the root mat.

XXI.C. Citations: Sections 373.414 and 373.416, F.S. (2007); Rules 40D-4.091, 40D-4.101, 40D-4.301, 40D-4.302, 40D-4.381, 40E-4.091, 40E-4.101, 40E-4.301, 40E-4.302, 40E-4.381, F.A.C.

## **XXII. MITIGATION**

A. Mitigation for wetland impacts pursuant to Section 373.414, F.S. shall not be required by DEP if the project is not located within wetlands, is not expected to adversely impact wetlands or complies with the following conditions:

1. All permanent fill shall be at grade. Fill shall be limited to that necessary for the electrical support structures, towers, poles, guy wires, stabilizing backfill, and at-grade access roads limited to 20-foot widths; and

2. The Licensee may utilize access and work areas limited to the following: a linear access area of up to 25 feet wide between electrical support structures, an access area of up to 25 feet wide to electrical support structures from the edge of the right-of-way, and a work area around the electrical support structures, towers, poles, and guy wires. These areas may be cleared to ground, including removal of stumps as necessary; and

3. Vegetation within wetlands may be cut or removed no lower than the soil surface under the conductor, and 20 feet to either side of the outermost conductor, while maintaining the remainder of the project right-of-way within the wetland by selectively clearing vegetation which has an expected mature height above 14 feet. Brazilian pepper, Australian pine, and melaleuca shall be eradicated throughout the wetland portions of the right-of-way; and

4. Erosion control methods shall be implemented as necessary to ensure that state water quality standards for turbidity are met. Diversion and impoundment of surface waters shall be minimized; and

5. The proposed construction and clearing shall not adversely affect threatened and endangered species; and

6. The proposed construction and clearing shall not result in a permanent change in existing ground surface elevation.

7. Where fill is placed in wetlands, the clearing to ground of forested wetlands is restricted to 4.0 acres per 10-mile section of the project, with no more than one impact site exceeding 0.5 acres. The impact site which exceeds 0.5 acres shall not exceed 2.0 acres. The total forested wetland clearing to the ground per 10-mile section shall not exceed 15 acres. The 10-mile sections shall be measured from the beginning to the terminus, or vice versa, and the section shall not end in a wetland.

8. Clearing or fill must not occur within 550 feet from the shoreline of a named waterbody designated as an Outstanding Florida Waterbody (OFW).

B. If the project does not comply with the requirements of paragraph A above, mitigation can be required. For construction in wetlands that does not comply with those requirements, PEF/TECO shall propose a mitigation plan as a post-certification submittal under Condition VIII. The following information shall be provided to the DEP Central and Southwest Districts Environmental Resource Permitting Section for review:

1. detailed description, location map, and recent aerial photograph of each wetland impact area in which the Rule 62-341.620(2)(b)-(i), F.A.C., limitations were not met;

2. acreage of the type and quality of wetland being impacted at each such site;

3. narrative, drawings, location map, and aerial photographs showing and explaining the proposed mitigation, or in the case of a mitigation bank, the name and location of the bank;

4. detailed description of the existing conditions at the impact site and, unless a mitigation bank is proposed, at the mitigation area;

5. acreage and wetland type of the proposed mitigation, or for a Department-approved mitigation bank, the type and number of credits;

6. if not a mitigation bank, documentation providing reasonable assurance that the proposed mitigation will be successful; and

7. an analysis pursuant to Chapter 62-345, F.A.C., to the extent applicable.

8. To the extent mitigation will be provided from a mitigation bank, a credit reservation letter will be provided from the selected bank demonstrating the necessary credits are being set aside to offset project impacts.

C. Mitigation plans must be found to fully offset the functions and values provided by wetlands that will be degraded or eliminated to the abundance and diversity of fish, wildlife and listed species, and the habitat of fish, wildlife and listed species. DEP will work with PEF/TECO in the development of acceptable mitigation plans. The mitigation plans proposed by PEF/TECO shall be submitted for review and compliance monitoring to DEP under Condition VIII.

D. If DEP, upon review of the proposed mitigation plan, determines that the proposed mitigation is inadequate to offset the loss of wetland values described above from this project, PEF/TECO may propose additional or alternative mitigation or dispute the determination pursuant to Condition IX.

E. If the proposed mitigation plan is deemed acceptable by DEP and does not involve the use of a mitigation bank, the construction conditions, success criteria and a monitoring plan will be incorporated into the construction conditions as an Attachment.

F. No construction within wetlands subject to the regulatory jurisdiction of DEP that does not comply with the non-procedural limitations of Rule 62-341.620(2)(b)-(i), F.A.C., or paragraph A above, shall commence until DEP approves a mitigation plan, and, if a bank is not used, mitigation construction conditions, success criteria and a monitoring plan are incorporated into the certification conditions.

G. PEF/TECO shall be deemed to have met the requirements of this condition if PEF/TECO satisfies the criteria of either Section 3.3 or Appendix 4(3) of the SWFWMD's Basis of Review for Environmental Resource Permit Applications (February 2007) and Sections 4.3 and 4.4 of the SWFWMD's Basis of Review for Environmental Resource Permit Applications (March 2008), and Chapter 62-345, F.A.C., if applicable.

XXII. Citations: Sections 373.414, 403.531, and 403.814(6), F.S. (2007); Rules 40D-4.091, 40D-4.301, 40D-4.302, 40E-4.091, 40E-4.301, 40E-4.302, 62-341.620, F.A.C., and Chapter 62-345, F.A.C.

### **XXIII. DRAINAGE AND EROSION CONTROL**

## **A. Maintenance of Drainage/Hydroperiod**

1. PEF/TECO shall employ best management practices, construction techniques, and adequate culverting in order to maintain existing drainage patterns along the transmission line ROW. Within all wetland areas affected, wetland control elevations shall be established and maintained. This condition shall not preclude PEF/TECO from improving preconstruction hydroperiods provided such improvement can be achieved in compliance with the other Conditions of Certification. PEF/TECO shall be deemed to have satisfied this condition if the access and finger roads satisfy the criteria of Rules 40D-4.301, 40D-4.302, 40E-4.301, and 4E-4.302, F.A.C.

2. Access roads and other nonexempt surface water management system facilities constructed in upland areas shall meet the conditions set forth in Rules 40D-4.301, 40D-4.302, 40E-4.301 and 40E-4.302, F.A.C., and applicable provisions of Part B, Basis of Review of SWFWMD's Environmental Resource Permitting Information Manual, including but not limited to Section 4.4, and SFWMD's Basis of Review for Environmental Resource Permit Applications including, but not limited to, Section 6.6.

XXIII.A. Citations: Sections 373.416 and 403.531, F.S. (2007); Rules 40D-4.091, 40D-4.301, 40D-4.302, 40E-4.090, 40E-4.301, and 40E-4.302, F.A.C.

## **B. Erosion/Runoff Control**

1. PEF/TECO shall compact or otherwise stabilize any fill material placed around newly installed structures, to reduce erosion, turbidity, nutrient loading and sedimentation in the receiving waters.

2. Grass seed and mulch or sod must be installed and maintained on exposed slopes prior to finalization of construction, and at all times measures must be taken to prevent erosion, sedimentation or turbid discharges into wetlands and or waters of the state, where the soils have been disturbed during construction.

3. To control runoff which may reach and thereby pollute waters of the state, necessary measures shall be utilized to settle, filter, treat or absorb silt-containing or pollutant-laden storm water to ensure against spillage or discharge of excavated material that may cause turbidity in excess of 29 Nephelometric Turbidity Units (NTU) above background in waters of the state. Control measures may consist of sediment traps, barriers, berms, and vegetation plantings, and must be maintained in effective condition at all locations where sediment has the potential to reach nearby wetlands until construction in the area is completed and disturbed soil areas are stabilized. Exposed or disturbed soil shall be protected and stabilized as soon as possible to minimize silt and sediment-laden runoff. The pH of the runoff shall be kept within the range of 6.0 to 8.5. PEF/TECO shall comply with the applicable nonprocedural requirements in Rules 40D-4 and 40E-4, F.A.C.

4. PEF/TECO shall ensure that adjacent properties are not impacted by wind erosion, or emissions of unconfined particulate matter in accordance with Rule 62-296.320(4)(c)1., F.A.C., by taking appropriate measures to stabilize affected areas.

XXIII.B. Citations: Section 403.531, F.S. (2007); Rules 40D-4.381, 40E-4.381, and 62-296.320, F.A.C.

## **XXIV. CONSTRUCTION PRACTICES**

### **A. Open Burning**

Any open burning in connection with initial land clearing shall be in accordance with the non-procedural requirements of Chapter 62-256, F.A.C., Chapter 5I-2, F.A.C., Uniform Fire Code Section 33.101, Addendum. Prior to any burning of construction-generated material, after initial land clearing that is allowed to be burned in accordance with Chapter 62-256, F.A.C., PEF/TECO shall seek approval from the DEP Southwest District Office whose approval may be granted in conjunction with the Division of Forestry. Burning shall not occur if not approved by the appropriate agency or if the Department or the Division of Forestry has issued a ban on burning due to fire safety conditions or due to air pollution conditions.

XXIV.A. Citations: Section 403.531, F.S. (2007); Chapters 5I-2 and 62-256, F.A.C.

### **B. Solid Wastes**

Solid wastes resulting from construction shall be disposed of in accordance with the non-procedural requirements of applicable regulations of Chapter 62-701, F.A.C.

XXIV.B. Citations: Section 403.531, F.S. (2007); Chapter 62-701, F.A.C.

### **C. Hazardous Substances and Spills**

1. If hazardous substances are used in the construction or maintenance of the transmission line, PEF/TECO shall provide the DEP with reasonable assurances that such hazardous substances will not enter stormwater drains or waterbodies.

2. Fuel and other petroleum product spills that enter stormwater drains or waterbodies, or fuel and other petroleum product spills that are in excess of 25 gallons shall be contained, cleaned up, and immediately reported to DEP Water Resources (ph: 813-632-7600; fax: 813-632-7662). Smaller ground surface spills shall be cleaned up as soon as practical.

XXIV.C. Citations: Sections 403.531 and 373.414, F.S. (2007); Chapters 40D-4 and 40E-4, F.A.C.

## **XXV. ELECTRIC AND MAGNETIC FIELD EFFECTS**

### **A. Bee Hives**

PEF/TECO shall advise beekeepers, known at the time the ROW is established or acquired, having bee hives within or near the ROW of the potential effect of the transmission line on bee hives.

XXV.A. Citation: Section 403.531, F.S. (2007).

### **B. Radio and Television Interference**

PEF/TECO shall investigate all complaints and take appropriate corrective action for impacts to radio or television reception caused by the proposed transmission line.

XXV.B. Citation: Section 403.531, F.S. (2007).

### **C. Electric and Magnetic Fields**

The Lake Agnes-Gifford 230-kV transmission line shall comply with the applicable electric and magnetic field standards set forth in Chapter 62-814, F.A.C. The electric and magnetic fields associated with any configuration developed during the final design of this project that is not shown in the Application shall be provided to DEP on DEP Form 62-814.900 at least 90 days prior to the start of construction, or such shorter time period to which the DEP Siting Coordination Office agrees, as required by Rule 62-814.520(3), F.A.C.

XXV.C. Citations: Section 403.523(10), F.S. (2007); Chapter 62-814, F.A.C.

## **XXVI. HERBICIDES**

Herbicides applied in the ROW shall only be those registered by the U.S. Environmental Protection Agency and which have state approval. Herbicide application rates and concentrations will be in accordance with label directions and will be carried out by a licensed applicator, meeting all federal, state and local regulations. Herbicide applications shall be selectively applied to targeted vegetation. Broadcast application of herbicide shall not be used in the ROW unless effects on non-targeted vegetation are minimized.

XXVI. Citations: Sections 403.061, 403.088, 487.031 and 487.041, F.S. (2007).

## **XXVII. OPERATION AND MAINTENANCE OF FACILITIES**

PEF/TECO shall properly operate and maintain the transmission line to achieve compliance with the Conditions of Certification.

XXVII. Citation: Section 403.531, F.S. (2007).

## **XXVIII.SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT (SWFWMD)**

A. The proposed transmission line will be co-located within existing rights-of-way and other impacted areas wherever feasible.

B. TECO/PEF shall provide to SWFWMD a copy of all post-certification filings for finalization of the right-of-way location and the construction and operation of the transmission line facilities including any access roads or surface water management system facilities, for those portions located within the SWFWMD.

C. A copy of the aerial photographs provided to DEP to show the boundaries of the acquired right-of-way within the SWFWMD will also be provided to SWFWMD. SWFWMD shall have an opportunity to review the photographs and notify DEP of any apparent conflicts with the requirements of the Conditions of Certification.

D. TECO/PEF shall provide reasonable assurance that the construction, operation and maintenance of the proposed facilities, including any access roads and structures constructed within wetlands or other surface waters, satisfy the criteria set forth in Rules 40D-4.301 and 40D-4.302, F.A.C., and applicable provisions of Part B, Basis of Review of SWFWMD's Environmental Resource Permitting Information Manual. Pursuant to Rule 62-17.665(7)(d), F.A.C., TECO/PEF shall provide sufficient information on a postcertification basis to demonstrate that there is reasonable assurance of compliance with SWFWMD substantive permitting requirements, including avoidance of floodplain impacts and provision of compensation where appropriate to achieve no net loss in floodplain storage capabilities and avoidance of secondary wetland dredging and/or filling impacts.

E. To the extent practicable, access roads, culverts and structures shall be located to avoid conflict with existing or permitted surface water management systems, permitted water withdrawal facilities or agricultural ground and surface water management projects as documented in SWFWMD records.

XXIII. Citations: Sections 403.526(2)(a)2., 373.085, 373.089, 373.093, 373.099, 373.414 and 373.416, F.S. (2007); Chapter 62-17.665(7)(d), Chapter 40D-4, Rules 40D-4 .301 and 40D-4.302, and Chapter 40D-9, F.A.C.

## **XXIX. FLORIDA DEPARTMENT OF TRANSPORTATION**

### **A. Post-Certification Reviews of FDOT Matters**

1. *Access Management to the State Highway System:*  
Any access to the State Highway System will be subject to the requirements of Rule Chapters 14-96, State Highway System Connection Permits, and 14-97, Access Management Classification System and Standards, F.A.C.

2. *Overweight or Overdimensional Loads:*

Operation of overweight or overdimensional loads by PEF/TECO on State transportation facilities during construction and operation of the transmission line will be subject to safety and permitting requirements of Chapter 316, F.S., and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

3. *Use of State of Florida Right-of-Way or Transportation Facilities:*

All usage and crossing of State of Florida right-of-way or transportation facilities will be subject to Rule Chapter 14-46, Utilities Installation or Adjustment, F.A.C.; Florida Department of Transportation's Utility Accommodation Manual (Document 710-020-001); Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Standard Specifications for Road and Bridge Construction; and pertinent sections of the Florida Department of Transportation's Project Development and Environmental Manual. US27, State Road 429, and Interstate 4 (I-4) have been identified as a Florida Intrastate Highway System (FIHS) and an emerging Strategic Intermodal System's (SIS) facility. The placement of the transmission line should take into consideration the possible widening of this facility to the extent practicable. If future widening should be required, the cost of relocating or reconstructing the transmission line will be borne by PEF/TECO to the extent required by Section 337.403, F.S., and Rule Chapter 14-46, F.A.C.

4. *Standards:*

The Manual on Uniform Traffic Control Devices; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; Florida Department of Transportation's Utility Accommodation Manual; and pertinent sections of the Department of Transportation's Project Development and Environmental Manual will be adhered to in all circumstances involving the State Highway System and other transportation facilities.

5. *Drainage:*

Any drainage onto State of Florida right-of-way and transportation facilities will be subject to the requirements of Rule Chapter 14-86, Drainage Connections, F.A.C., including the attainment of any permit required thereby.

6. *Use of Air Space:*

Any newly proposed structure or alteration of an existing structure will be subject to the requirements of Chapter 333, F.S., and Rule 14-60.009, Airspace Protection, F.A.C. Additionally, notification to the Federal Aviation Administration (FAA) is required prior to beginning construction, if the structure exceeds notification requirements of 14 CFR Part 77, Objects Affecting Navigable Airspace, Subpart B, Notice of Construction or Alteration. Notification will be provided to FAA Southern Region Headquarters using FAA Form 7460-1, Notice of Proposed Construction or

Alteration in accordance with instructions therein. A subsequent Determination by the FAA stating that the structure exceeds any federal obstruction standard of 14 CFR Part 77, Subpart C for any structure that is located within a 10-nautical-mile radius of the geographic center of a public-use airport or military airfield in Florida will be required to submit information for an Airspace Obstruction Permit from the Florida Department of Transportation or variance from local government depending on the entity with jurisdictional authority over the site of the proposed structure. The FAA Determination regarding the structure serves only as a review of its impact on federal airspace and is not an authorization to proceed with any construction. However, FAA recommendations for marking and/or lighting of the proposed structure are made mandatory by Florida law. For a site under Florida Department of Transportation jurisdiction, application will be made by submitting Florida Department of Transportation Form 725-040-11, Airspace Obstruction Permit Application, in accordance with the instructions therein.

## **B. Best Management Practices**

1. Traffic control during facility construction and maintenance will be subject to the standards contained in the Manual on Uniform Traffic Control Devices; Rule Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C.; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; and Florida Department of Transportation's Utility Accommodation Manual, whichever is more stringent.

2. It is recommended that PEF/TECO encourage transportation demand management techniques by doing the following:

- a. Placing a bulletin board on site for car pooling advertisements.
- b. Requiring that heavy construction vehicles remain onsite for the duration of construction to the extent practicable.

3. If PEF/TECO uses contractors for the delivery of any overweight or overdimensional loads to the site during construction, PEF/TECO should ensure that its contractors adhere to the necessary standards and receive the necessary permits required under Chapter 316, F.S., and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

XXIX. Citations: Chapters 14-26, 14-46, 14-86, 14-94, 14-96, and 14-97, F.A.C.; Chapter 316, F.S. (2007); Sections 337.401-404, F.S. (2007); 14 C.F.R. Part 77.

### **XXX. ROW LOCATION ALONG SR 429**

A. With respect to the Applicants' Preferred Corridor south of the intersection of Oak Island Road/Funie Steed Road and SR429 and north of the southern edge of the OIC residential development, considering the preliminary engineering reviews undertaken and existing conditions of this area of the corridor, PEF agrees that:

1. PEF shall locate the transmission line ROW so that no existing homes in the OIC residential development will be located within the ROW;

2. PEF shall locate the transmission line ROW on the west side of SR429 unless FDOT objects, unless another regulatory agency with jurisdiction over the project objects because the ROW is not consistent with the conditions of certification, or unless an unforeseen engineering or safety concern arises;

3. If PEF is unable to locate the transmission line ROW on the west side of SR429, PEF shall locate the transmission line ROW on the east side of SR429 with transmission structures located at least 15 feet inside FDOT's ROW for SR429, unless FDOT objects, unless another regulatory agency with jurisdiction over the project objects because the ROW is not consistent with the conditions of certification, or unless an unforeseen engineering or safety concern arises. In addition:

a. In locating the transmission structures consistent with the Conditions of Certification, PEF will make best efforts to maximize the distance between the transmission line structures and existing homes within the OIC residential development; and

b. If the transmission structures are located at least 15 feet inside FDOT's ROW for SR429, PEF will seek property rights outside FDOT's ROW only for access easements and for aerial easements up to 30 feet from the eastern edge of FDOT's ROW.

## Attachment 1: Certified Corridor Location Map

# LAKE AGNES TO GIFFORD CERTIFIED CORRIDOR



**Progress Energy**



## Legend

- Service territory
- Railroads
- Major roads
- Existing substation
- Planned substation
- Preferred corridor
- County boundaries

## NOTES:

1. Map not to scale
2. Corridor width varies from approximately 435 feet up to 1 mile.

